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Elvia R. Arriola

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# **VOICES FROM THE BARBED WIRES OF DESPAIR: WOMEN IN THE *MAQUILADORAS*, LATINA CRITICAL LEGAL THEORY, AND GENDER AT THE U.S.-MEXICO BORDER**

*Elvia R. Arriola\**

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\* Visiting Professor, DePaul University College of Law. I am extremely grateful to the organizers of this Symposium for the opportunity to present this essay that is part of a larger project focusing on the impact of United States public policy and law at the U.S.-Mexico border. My thanks to Professors Sumi Cho, Frank Valdes, Lisa Iglesias, Peter Kwan, Margaret Montoya, Leslie Espinoza, Amy Kastely, Fran Ansley, Laura Padilla, Berta Esperanza Hernández-Truyol, Guadalupe Luna, Kevin Johnson, and George Martínez for continual support and inspiration to engage in Latina critical legal theory and to challenge the intellectual borders of the legal academy through the use of personal and historical narrative. Special thanks to Julie O'Neill for the voluminous documentation on INS activities she researched for this project, to University of Texas law students Claudia Valles (J.D. 1998), Patrick Banis (J.D. 2001), and Karen Jones (J.D. 2000) for their research support and inspiration, to DePaul law student Rachel Hempel (J.D. 2001), and to Appalshop filmmaker Anne Lewis for authorizing the use of the video-letters she has produced thus far between Mexican and American workers as part of a film project called The Morristown Project, which will document the lives of those affected by the relocation of American jobs to Mexico. Finally, my heartfelt gratitude to Donna Blevins, Esq., for her help in developing a highly productive research weekend in Ciudad Acuña, for the inspiring tour and photos of that border town's industrial park, and for constant support.

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I. INTRODUCTION

We never had a fixed production standard; we just had to make as many dolls as the supervisor wanted, the number demanded by the buyer. All of us girls stood in a kind of circle, and as the conveyor belt went by, some of us grabbed the dolls to dress them, and the rest did other things to the dolls. The pace was so swift that very quickly the dolls began to stack up. When that happened the supervisor would come to reprimand us, and we just got more agitated.<sup>1</sup>

—Elena, a *maquiladora* worker.

One time I had just spoken with one of the girls about our treatment in the workplace, and right away the boss knew about it. All I tried to do was organize study groups for women who had never finished primary school, because their general awareness is quite limited. Some cannot even add or subtract, which indicates the kind of barriers there are to improving workers' lives.<sup>2</sup>

—Alma, a *maquiladora* worker.

This essay introduces a research method and practice for engaging in Latina critical legal theory. I invite the reader to theorize for social justice on a vast array of socio-economic and human rights problems that currently exist at the U.S.-Mexico border. Using a gendered perspective, I will analyze the *maquiladoras*,<sup>3</sup> the 4,000—plus transna-

1. NORMA IGLESIAS PRIETO, BEAUTIFUL FLOWERS OF THE MAQUILADORA: LIFE HISTORIES OF WOMEN WORKERS IN TIJUANA 8-9 (Michael Stone & Gabrielle Winkler trans., 1997).

2. *Id.* at 26.

3. Originally, the term *maquiladora* referred to millers who kept a part of the flour as payment for grinding wheat. See DEVON G. PEÑA, THE TERROR OF THE MACHINE: TECHNOLOGY, WORK, GENDER AND ECOLOGY ON THE U.S.-MEXICO BORDER 46-51 (1997). *Maquiladoras* today are in-process assembly plants owned by transnational corporations that operate primarily in the export market. *Id.* at 46. They are not manufacturing plants but rather processors or assemblers of component parts produced in the home country of the corporation. *Id.* The *maquiladoras* produce a wide variety of consumer goods such as: (1) electronics (e.g., TVs, stereos, radios, computer circuit boards); (2) dress apparel (e.g., jeans, dresses, sports clothing, uniforms, socks); (3) toys; (4) surgical tools and supplies; (5) wood and metal furniture products; and (6) automotive components. *Id.* See *infra* Tables A, B, and C.

tional United States corporations that employ thousands of Mexicans, mostly female, in low-paying assembly jobs for the export of American consumer goods and services. My hope is to identify through the narratives and supporting data the central role of the *maquiladoras* in perpetuating the systemic racial and sexual exploitation and abuse at the border that is legitimated by American law, public policy, and official conduct. In articulating the possibilities for engaging in Latina critical legal theory, I also hope to illustrate the value of a gendered, inclusive perspective in any critically-based social justice theorizing, one that is committed to fluidity in grappling with identity, in contemporary social, economic, and political hierarchies, especially those created by gender, sexuality, race, ethnicity, class, and citizenship status under American law and policy.

We loved the trips down old Pacific Coast Highway to San Diego, San Ysidro and across the border to wonderful Tijuana. A day in Tijuana meant coming home with large bags of *pan dulce* from Mexican bakeries, strolling the streets shopping for trinkets, toys, and sugary-cinnamon covered *churros*. We went for the more easily available medicines, home herbal remedies, pottery, doctors, and to visit friends of friends in need. As we got older my mother ushered my adolescent brothers away from the flirtatious prostitutes, *las mujeres de la calle*, inviting them into a bar for a beer. The differences in class dizzied our young minds. The people seemed familiar and then not. We spoke English; they didn't. We felt better off even in our own working-class existence. We also learned charity lessons as we dropped our American coins into the hands of children and old women and men begging on the streets of the city.<sup>4</sup>

For some of us, critical legal theory that centers factors like race, ethnicity, gender, class, or sexual orientation offers an opportunity for writing ourselves whole, that is for reclaiming aspects of our identities consciously or unconsciously lost. Scholars engaging in Latina/o critical legal theory, or "LatCrit theory,"<sup>5</sup> can take the opportunity to claim and reclaim the facts, history, and identities we, the individuals broadly represented by the umbrella term "Latinas and Latinos," have been denied in most Anglo-American history, literature, educa-

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4. Author's journal notes (Aug. 1999) (on file with author).

5. See generally Elvia R. Arriola, *March!*, 19 CHICANO-LATINO L. REV. 1 (1998) [hereinafter Arriola, *March!*] (describing the evolving movement of Latina and Latino scholars centralizing the Latina/o experience under a category of "outsider scholarship" described as "LatCrit"); Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (suggesting discussion of social and legal issues germane to Latinas/os); Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 10 LA RAZA L.J. 1 (1998).

tion, and textbooks.<sup>6</sup> Because the research and writing of this essay sometimes evoked strong memories and feelings associated with my first encounters with the border as a child, I share those reflections as a lighter introduction to the examination of one set of realities associated with the border—the socio-economic byproducts of greed, war, and compromise in that heavily patrolled, guarded, and recently militarized<sup>7</sup> zone known as the U.S.-Mexico border.

The question of this Symposium is whether we can bridge divides in social justice theory by attempting to unify anti-subordination theories. I cannot fathom the concept of a truly unified theory of social justice, that is, one capable of addressing the myriad problems of those with diverse backgrounds and identities. However, I do think that existing social justice theory would benefit from a more conscious commitment to inclusiveness or diversity of perspective. My own quest for a Latina critical legal theory is grounded in my roots as a Mexican-American/Chicana/Latina *and* as a feminist LatCrit scholar,<sup>8</sup> who seeks an inclusive discourse centering the Latina/o experience with scholars whose own identities are representative of this nation's enriching cultural diversity. I do not try to generate any grand theory of social justice for all Latinas, nor to give a comprehensive treatment of the myriad interconnected problems that arise for Latinas/os at the U.S.-Mexico border. Such a task merits volumes of research.

Before continuing, I should acknowledge that problems of definition and content arise from the casual use of a term such as "Latinas" without explaining the difference it bears to other familiar terms in contemporary American discourse such as "Hispanic" and "Chicana." Some LatCrit scholars synonymously use "Latinas" with "Hispanic" and "Chicana."<sup>9</sup> In this essay I use the term "Latinas" for four reasons: (1) to capture the distinct identity of the *Mexicanas* working for American transnational corporations in border cities; (2) to avoid the confusion of using the term "Chicana" to refer to women who are *not* Mexican-American or Chicana; (3) to include the identities of women who have worked in the *maquiladoras* and are natives of a Central or

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6. For an exception to this critique, see BENJAMIN B. RINGER, "WE THE PEOPLE" AND OTHERS: DUALITY AND AMERICA'S TREATMENT OF ITS RACIAL MINORITIES 3-4 (1983) (arguing that white immigrant minorities are no longer locked out of institutional environments by discriminatory practices).

7. See TIMOTHY J. DUNN, THE MILITARIZATION OF THE U.S.-MEXICO BORDER, 1978-1992: LOW-INTENSITY CONFLICT DOCTRINE COMES HOME 30-33 (1996) (describing the gradual escalating militarization of the U.S.-Mexico region and its consequences); see also *infra* Part V.

8. See Arriola, *March!*, *supra* note 5, at 2-6 (describing the author's personal and professional connections to the LatCrit movement).

9. See, e.g., Laura M. Padilla, *Single-Parent Latinas on the Margin: Seeking a Room With a View, Meals, and Built-In Community*, 13 WIS. WOMEN'S L.J. 179, 197 (1998).

other Latin American country; and (4) to avoid using "Hispanic," which has been criticized for lumping groups together "without articulating their histories."<sup>10</sup>

I realize that LatCrit scholars have also been cautioned against an uncritical use of the term "Latinas/os," especially where an issue like human rights at the border intersects with the organizing efforts of indigenous peoples living in Mexico, Central, or Latin America.<sup>11</sup> For example, I could have referred to the women in the *maquiladoras* as Mexicanas, thus inaccurately suggesting that only Mexicans are in the potential labor supply in Mexico's border cities.<sup>12</sup> But the flow of migrants fleeing political and social unrest in Central America from countries like El Salvador, Guatemala, Nicaragua, and Honduras in recent decades has diversified the migrant labor population at the border<sup>13</sup> and those waiting for the right time to cross into the United States.<sup>14</sup> This definition problem is complicated by the fact that some people have adamantly disassociated themselves from the "Latinos" label, such as the indigenous peasants who are in conflict over land rights with Latino governments like Mexico and Guatemala.<sup>15</sup> Yet, simply because of their physical appearance, those same people may share with non-indigenous Latina/os the experience of constant harassment and human rights abuse from the Immigration Naturalization Service ("INS") Border Patrol. As the critical essayist Gloria Anzaldúa has noted, this is because "[g]ringos in the U.S. Southwest

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10. Teresa Córdova, *Power and Knowledge: Colonialism in the Academy*, in LIVING CHICANA THEORY 17, 27 (Carla Trujillo ed., 1998) (discussing the inaccuracies of lumping groups together under the "Hispanic" term). See also Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas/As' Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69, 95 n.101 (1998).

11. See Luz Guerra, *LatCrit Y La Des-Colonización Nuestra: Taking Colón Out*, 19 CHICANO-LATINO L. REV. 351, 351-53 (1998).

12. See Debbie Nathan, *Irma's Story: The Life of an Illegal Alien*, in WOMEN AND OTHER ALIENS: ESSAYS AT THE U.S.-MEXICO BORDER 53-62 (1991).

13. See PRIETO, *supra* note 1, at 46. A majority of the women in the *maquiladoras* are migrants who came either alone or with their families to the border in search of a better life. *Id.*

14. For example, thousands of Hondurans came to the United States in the 1980s as refugees. The Reagan Administration and its "Contra" rebel allies used Honduras as a launch attack base against Sandinista-controlled Nicaragua. See *Hondurans Campaign to Stay in United States* (visited Feb. 12, 1998) <nnirr-news@nnirr.org> (on file with author). A more recent influx of Central Americans into the United States was projected following Honduras' devastation by Hurricane Mitch. See S. Lynne Walker & Marcus Stern, *International Storm, Mistaken Moves: Central Americans Believe U.S. Will Let Them In*, SAN DIEGO UNION-TRIB., Jan. 14, 1999, at A-1 [hereinafter Walker & Stern, *Mistaken Moves*]. The number of hurricane victims was so high that Mexican officials considered letting them pass freely through Mexico rather than deporting them. *Id.*

15. See RIGOBERTA MENCHÚ, I, RIGOBERTA MENCHÚ: AN INDIAN WOMAN IN GUATEMALA 102-16 (Elisabeth Burgos-Debray ed. & Ann Wright trans., 1984) (portraying the struggles for land rights and the class-based conflicts between land owners and peasants).

consider [all] the inhabitants of the borderlands 'transgressors,' and 'aliens'. . . whether they're Chicanos, Indians or Blacks."<sup>16</sup> No doubt, my use of the term "Latinas" is complicated by the fact that many of the workers found at the U.S.-Mexico border are from the indigenous classes. If the workers are not indigenous, they are often extremely poor, having left barren farmlands in Mexico's interior or impoverished regions that lack adequate health, education, and public services. They are also most likely to suffer racial discrimination in *both* countries because of their dark skin color.<sup>17</sup>

At times I will use terms like *gender attitudes*, or *gender roles*, and/or *gender identities*.<sup>18</sup> While the experiences of women in the *maquiladoras* could be characterized as a problem of sexist racism, I prefer the use of "gender" oppression to highlight the difference between a social category and a biological category like "sex." As a social concept, "gender" becomes a fundamental category of analysis in a variety of disciplines, such as history or law.<sup>19</sup> In this categorical sense "gender" generally describes how a society or culture has socially con-

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16. For a critical analysis of the dehumanizing impact of the term "illegal aliens," see Kevin R. Johnson, "*Aliens*" and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263, 276-79 (1996-97) (offering a critical analysis of the pejorative term "illegal alien"); see also GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 3 (1987).

A border is a dividing line, a narrow strip along a steep edge. A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants . . . Gringos in the U.S. Southwest consider the inhabitants of the borderlands transgressors, aliens—whether they possess documents or not, whether they're Chicanos, Indians or Blacks.

*Id.*

17. See, e.g., Kevin G. Hall, *Racism in Mexico a Dirty Little Secret*, MIAMI HERALD, INT'L ED., Aug. 8, 1996 (describing a remark by a bouncer at an elite night club that his dark-skinned Mexican fiancé and her friend should not be allowed entry "because they look like maids," and that "[m]aids are generally indigenous women, dark-skinned, with thick hair in long braids"); Kevin R. Johnson, *Immigration and Latino Identity*, 19 CHICANO-LATINO L. REV. 197 (1998) (revealing two vantage points of discussion of racial identity to be viewed, individually and group); George A. Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998) (arguing that the legal classification of Mexican-Americans as "white" creates a barrier between African-Americans and Mexican-Americans). See generally Patrisia Gonzalez & Roberto Rodriguez, *Internal "Border Checkpoints Impede Citizen Travel* (Sept. 18, 1999) (on file with author).

18. See, e.g., ELIZABETH FOX-GENOVESE, *WITHIN THE PLANTATION HOUSEHOLD: BLACK AND WHITE WOMEN OF THE OLD SOUTH* 29 (1988). *Gender relations* means interaction between men and women within specific communities. *Gender roles* are activities that men and women use to find their identities. *Gender identities* refer to the deepest sense of what men and women are. See *id.*

19. See generally JOAN WALLACH SCOTT, *GENDER AND THE POLITICS OF HISTORY* (1988) (arguing for a postmodern interpretation of the categories "man" and "woman" in historical scholarship, one that reflects the tentativeness of these seemingly rigid concepts).



structed its people, their behavior, identities, and the institutions within which they function (e.g., families, government, economies) along the conceptual divide between the masculine and the feminine.<sup>20</sup> People do not experience their gender in the abstract, but rather in relation to others.<sup>21</sup> Therefore, I further assume as a feminist and a Latina critical theorist that any view as to how gender is socially constructed in a particular time, place, or setting is ineluctably grounded in an individual's race, class, culture, and sexuality.

In this vein, this research project is narrowly focused on the fluid identity of Latinas working in and around the *maquiladora* industries, most of whom are likely to be Mexicanas and some of whom may not be members of Mexico's indigenous classes. By fluid identity, I mean a person may be identified by a multiplicity of factors, which any one alone, but often together, may explain how Latinas are recruited, hired, paid, sexually harassed, abused, and disciplined in the *maquiladoras*. The term also explains how status or specific aspects of a person's treatment may relate back to attitudes about physical sex, cultural-gender role, age, class, race, ethnicity, educational background, and citizenship or original residence. The concept of fluid identity also allows one to theorize about how other power dynamics (e.g., the United States capitalist dominance over Mexico or other Third World nations) intersect with one or more traits (e.g., sex, race, and class) to produce a unique example of gendered oppression.

While the central focus of this essay is ultimately on women in the *maquiladoras*, the social, political, historical, and legal norms that provide context to their treatment are inseparable from a rudimentary exploration of the "U.S.-Mexico borderlands" as a way of life and law. Further, I cannot ignore the overwhelming presence of the United States' lawful activities such as INS<sup>22</sup> border patrol, drug enforcement,

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20. See *id.* at 47-50 (looking at historical and current gendered concepts that translate into policy); Elvia R. Arriola, *Law and the Gendered Politics of Identity: Who Owns the Label "Lesbian"?*, 8 HASTINGS WOMEN'S L.J. 1, 5-9 (1997) (revealing the fundamentally arbitrary societal labeling of gender based upon characteristics and appearances according to male or female biological sex categories). But see PIERRETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* 2-5 (1994) (describing the concept of gender as an organizing principle of social life).

21. Thus, one's experience of gender as a "woman" is in relation to her experience of gender identity in relation to a "man." See FOX-GENOVESE, *supra* note 18, at 29 ("To be a woman is to be a woman in relation to men."); see also HONDAGNEU-SOTELO, *supra* note 20, at 2-5 (gender as an organizational principle); SCOTT, *supra* note 19, at 32 (gender as separate spheres instead of "man" enveloping "woman").

22. The Immigration and Naturalization Service ("INS") is colloquially referred to by Southwestern undocumented Latinos who fear detection and deportation as "*la migra*." See Elvia R. Arriola, *LatCrit Theory: International Human Rights, Popular Culture, and the Faces of Despair*

and corporate expansionism under the North American Free Trade Agreement ("NAFTA").<sup>23</sup> I thus provide a gendered perspective on the impact of law and policy at the border in two ways throughout this essay: (1) by describing the largely female experience of harsh working conditions and worker treatment in the *maquiladoras*, and the largely male experience of illegal border crossing in a hostile and militarized region; and (2) by showing the use of a gender as a category of a culture's language, behavior, values, and attitudes that perpetuate and represent gender identity.<sup>24</sup> This latter sense of a gendered perspective encourages a more nuanced examination of the borderlands culture of which the *maquiladoras* and its exploitation of women is only a part. Thus, we can ask questions such as: (1) what factors allow the perpetuation of a highly feminized work culture in the *maquiladoras*; (2) how do conscious or unconscious notions of gender and/or race and class influence the structure and availability of the jobs; (3) the forms of discipline and control in these assembly plants; or (4) which phenomena in either the work culture or the overall environment of the border and the globalization of the economy perpetuate gendered ideologies? Finally, I use the term "borderlands" in two senses. First, I use the term in the sense of actual, physical trans-border interactions between two nations, with all of the surrounding political debate over the "violations" and "transgressions" of the border by undocumented workers who cross into the United States.<sup>25</sup> Second, I use it in the metaphorical sense of the border serving as a site of contested meanings in relationships between the peoples of two or more nations, cultures, genders, races, classes, languages, and identities wrought by the idea of a closed border.<sup>26</sup> Thus, I direct my

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in *INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245, 258 n.41 (1996-97) [hereinafter Arriola, *LatCrit Theory*] (defining the term "*la migra*").

23. One scholar has argued that NAFTA'S (the agreement between the United States, Mexico, and Canada) real purpose is the re-negotiation of an "ongoing and often times uncomfortable, relationship between two countries—Mexico and the United States—that seem at times to have little in common other than a border." Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POL. INT'L BUS. 391, 393 (1993).

24. See SCOTT, *supra* note 19, at 28-41.

25. See Arriola, *LatCrit Theory*, *supra* note 22, at 256-62.

26. See generally ANZALDÚA, *supra* note 16, at 3. See also Berta Esperanza Hernández-Truyol, *Las Olvidadas-Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER, RACE & JUST. 353, 361-94 (1998); Maria-Socorro C. Tabuenca, *Border Perspectives desde las Fronteras: A Reading on Rosario Sanmiguel's "El reflejo de la luna,"* in LIVING CHICANA THEORY, *supra* note 10, at 238-46 (1998) (proposing two vastly distinct perspectives on the border: (1) the Mexican perspective that focuses on literature and (2) the United States or "metaphorical idea of border" perspective that focuses on Chicano/a and Latin American literature but does not address the geographical borders).

gendered lens to the borderlands as a whole, seeing it almost as a region with a national character of its own. Giving too much weight in the analysis to the national/political boundaries undermines the task of exposing the totality of the social injustices found today at the U.S.-Mexico border. Ultimately, I seek a conceptual basis for connecting women's status in the *maquiladoras* not only to the ongoing globalizing reach of transnational corporate activities, but also to the increasing United States' militarized border surveillance. The totality of these activities has the consequence of perpetuating cycles of sexism, racism, environmental, and human rights abuse.

Part II provides a brief history relevant to the creation of the U.S.-Mexico border and the contemporary borderlands culture, including the phenomena of legal and illegal border crossings.<sup>27</sup> I describe the longer history of a non-hostile border contrasted against the contemporary phenomena of closed border attitudes. These attitudes, which may originate in long-held prejudices about Mexicans, are reflected in public policies that authorize constant surveillance by the INS Border Patrol. This is an activity that reinforces anti-immigrant hostilities directed at Mexicans by United States citizens. I dramatize the harsh impact of these contemporary policies of constant surveillance by describing extremely high risks to life and bodily injury that have befallen numerous crossers at the U.S.-Mexico border in recent years. This section also suggests that the confluence of current border policies displays two faces. One face shows a border that is closed to migrant laborers, which bears masculinized features of military aggression tactics of surveillance as well as largely masculinized objects of detection and control, the male/migrant/undocumented worker. The other face shows an open border for foreign trade supported by public policies like NAFTA, which have induced hundreds of companies to close down in the United States only to re-open as *maquiladoras* in Mexico with highly exploitable workforces in fulfillment of the asserted public policy goals of revitalizing Mexico's labor economy and increasing tariff-free foreign trade by United States companies. Finally, this section advances the use of a Latina-centered critical legal theory grounded in the use of narratives to support my argument that the female *maquiladora* workers' sex and gender has been socially constructed into the perfect employee who, once controlled and disciplined by the values of domesticity in her culture, is now the ideal worker for thousands of high-volume corporate producers of first world consumer goods and services.

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27. See *infra* Part II.A.

Part III applies the Latina critical legal theory articulated in Part II to the job structure, sex segmentation, pay equity, and human rights issues that arise in the borderland's culture as a result of the expanding presence of *maquiladoras* since the 1980s and the signing of NAFTA.<sup>28</sup> This section shows gender attitudes "at work" in the determinations by *maquiladora* owners and supervisors that women's bodies and their essential attributes are suitable for particular kinds of harsh, detailed, high-producing volumes of work, paid at low wages and on long work schedules. The analysis of wages, working conditions, treatment, sexualized expectations, and harassment are articulated through the voices of working women in the past two decades. Their voices provide a powerful basis for a social justice critique of the occupational structure and socio-cultural character of the ongoing recruitment and hiring practices of Mexican women in the *maquiladora* industries by American businesses, who frequently justify their occupational structure as a mutual social and/or economic benefit to both nations. My goal is to ground these narratives as the basis of a critique that illustrates the ironic consequences of the celebrated *maquiladora* investments by American businesses. While these investments may contribute to the rise in women's participation in the Mexican workforce, they also may contribute to the failure of their increased employment to improve working women's lives. I argue that by looking at how women are treated, one may see that the global rise of internationally produced labor and foreign investment in Mexico has produced highly questionable results from a social justice standpoint. One ironic result is the apparent American "export" of historic social crimes once committed at the turn of the twentieth century against mostly immigrant women who were exploited through poor wages and unsafe or unhealthy working conditions during intense periods of American industrialization.

Part IV explores the working environment of female *maquiladora* workers from two perspectives—in the context of the specific occupational hazards for employees and in the metaphorical perspective of walking out of the factory door into the environment of a dismal border city.<sup>29</sup> I argue that the international division of labor between American and Mexican workers produces unconscionable working conditions in major portions of the *maquiladora* industry such that daily exposure to health and safety risks are literally so common for the worker as to be a standard term or condition of employment. Those common risk factors include contact with highly toxic instru-

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28. See *infra* notes 160-274 and accompanying text.

29. See *infra* notes 275-304 and accompanying text.

ments of production, such as chemicals, acid fumes and other raw materials, toxic workspaces because of poor ventilation, and contact with dangerous instruments of production without appropriate protective gear. All are conducive to hazard because of the high-pressure production quotas and schedules imposed on workers. I further argue that certain aspects of the *maquiladora* industry, narrowly illustrated in the lack of social responsibility towards the worker, are a strong indicator that the increased expansion of *maquiladoras* under NAFTA may have a highly negative environmental impact on the borderlands. I use the story of two workers to illustrate both the perceived optimism and the pessimism of women's employment in the *maquiladoras*.

Part V returns to assessing "life on the border" by exploring the implications of the increasingly militarized character of the INS Border Patrol in the Southwest and the closed character of the border.<sup>30</sup> This image is contrasted against one of an "open border"—towards free trade with Mexico under the auspices of trade agreements like NAFTA.<sup>31</sup> This part also provides the law and policy context for examining the variety of economic and social activities of the border, including the *maquiladoras*, the policing operations of the INS Border Patrol with the help of the United States military, and the motivations underlying the enhancement of surveillance and apprehension tactics in the last two decades against people suspected of transporting,<sup>32</sup> or being transported,<sup>33</sup> illegally across the U.S.-Mexico border. I argue that the symbolism of a closed border for poor migrants, accomplished through militarized border activities of the INS, imposes a metaphoric

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30. See *infra* notes 325-371 and accompanying text.

31. The Preamble to the North American Agreement on Labor Cooperation which followed the signing of NAFTA recalls among other resolutions: (1) the creation of an expanded and secure market for the goods and services produced in their territories; (2) the enhancement of the competitiveness of their firms in global markets; (3) the creation of new employment opportunities and the improvement of working conditions and living standards in their respective territories; and (4) the protection, enhancement and enforcement of basic workers' rights. See North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289.

32. The colloquial term among would-be crossers for the person hired as a guide across the border is *coyote*. The customers flocking to the 2,000 mile border are known as *los pollos* (chicks). See *El Coyote*, in MARILYN P. DAVIS, MEXICAN VOICES/AMERICAN DREAMS: AN ORAL HISTORY OF MEXICAN IMMIGRATION TO THE UNITED STATES 127 (1990) (documenting the range of personal and economic reasons why Mexicans attempt to cross the closed border).

33. Workers are often transported into California, Arizona, New Mexico, and Texas. See Patricia Gonzales & Roberto Rodriguez, *The "Migra-Ization" of the Police*, in COLUMN OF THE AMERICAS (Aug. 7, 1998); see also National Network of Immigration and Refugee Rights, *Arizona Police Accused of Civil Rights Violations* (Aug. 21, 1997) (visited Mar. 10, 2000) <[http://www.nnirr.org/nnirr/news/human\\_rights/970821-arizona.html](http://www.nnirr.org/nnirr/news/human_rights/970821-arizona.html)> (reporting on recent raids in non-border areas).

and official discipline on the impoverished Mexican that he should "stay at home." Daily enforcement of this symbolic message ensures the perceived success under NAFTA of inducing American investors to continue to open *maquiladoras* in Mexico and to guarantee a surplus of cheap, exploitable labor.

By looking at the *maquiladoras* from a gendered perspective, this article barely scratches the surface of a topic with enormous consequences for policymakers from a social, political, historical, and legal perspective whether on the United States side or Mexican side of the border.<sup>34</sup> My concern here is primarily with the impact of United States law and policy, although discussion of certain socio-economic issues for Mexican working women may require reference to relevant Mexican law. Most narrowly, however, this research project uses the subject of the *maquiladoras* as a vehicle for exploring the social justice impact of a network of American laws and policies that operate at cross purposes by (1) closing the border to poor, migrant Mexicans and Central Americans through greater militarization of INS border patrol; (2) opening the border to expanded foreign trade at a geographic point that has traditionally divided a First and Third World nation; (3) attempting to control and discipline the flow of immigration from Mexico's interior by using abusive and militarized surveillance methods; while also (4) encouraging through the proliferation of NAFTA-induced investments at the border the migration of peasants who travel north hoping to find work in the *maquiladoras* only to discover a highly gendered international division of labor. The laws and policies have designated the "ideal" *maquiladora* worker to be a young, uneducated, exploitable female, while the frustrated male migrant is left behind with no other option than to risk his life by illegally crossing the border in search of freedom from his and his family's poverty and despair.

## II. LA FRONTERA: THE LEGAL, POLITICAL, AND HISTORICAL CONTEXT OF THE U.S.-MEXICO BORDER, INS BORDER PATROL, DRUG ENFORCEMENT, AND NAFTA

Borders are places where desperate people confront the power of national institutions; places where the dreams that lead people from their homes become empty. Borders often define a racial, cultural, and economic divide as well as the political division between nations. And they are dangerous. Between 1993 and 1996, according to the INS, more than 1,000 people died trying to cross the border

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34. See *infra* Parts II, III, and V.

between Mexico and the United States. Most of these were never identified.<sup>35</sup>

*A. A Brief History of the Border and the Attraction to El Norte.*

The story of the border's creation is standard fare in the tourist industry of the Central Texas city of San Antonio that hosts the famous site of the Battle of the Alamo or the "cradle of Texas liberty."<sup>36</sup> The U.S.-Mexico border, all 1,951.36 miles of it,<sup>37</sup> emerged from an era when Mexico's northern territories were only sparsely settled by loyal Mexicans, who were too few to defend against American western expansionism.<sup>38</sup> Mexicans arrived in larger numbers only after the U.S.-Mexico war ended. In the 1860s they were recruited to build railroads and in the 1870s they were recruited to open the West to agriculture and mining.<sup>39</sup> One bit of my own family's history tells how my great-great-grandfather Rivas and his brother sailed North to join the thousands of "49ers," who poured into California from everywhere (including Mexico) in search of their luck in the Gold Rush. The discovery of gold had followed the signing of the Treaty of Hidalgo in 1848, which severed Mexico with what is now the Southwestern United States.<sup>40</sup> As a result, even though the first immigration law emerged from war, border hostilities were not the enduring feature.<sup>41</sup>

By and large the history of the border has been one of official non-hostility. The end of the Mexican-American war ushered in a long period of cultural sharing of customs, language, and disregard for the political boundary.<sup>42</sup> In 1910, Mexicans felt the economic pressures of the revolution against President Díaz. Thousands headed to *El Norte* and at least 220,000 easily found work across the border.<sup>43</sup> By 1921, Congress created the United States Border Patrol and passed immigration quota laws, although the Mexican border-crosser was ex-

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35. THE MORRISTOWN PROJECT (Anne Lewis 1998-99) (grant application) (copy on file with author). The film is a work-in-progress documentary on changing economic lives for industrial workers in Eastern Tennessee threatened by the move of their employers to reduce wage and benefit costs by re-opening in Mexico as *maquiladoras*.

36. This language appears on a plaque at the historic Fort Alamo.

37. It includes 1,253.69 miles of the Rio Grande, 23.72 miles of the Colorado River, and 697.67 miles of land border. See Margaret E. Montoya, *Border Crossings in An Age of Border Patrols: Cruzando Fronteras Metafóricas*, 26 N.M. L. REV. 1, 2 n.3 (1996) (citing LEON C. METZ, BORDER, THE U.S.-MEXICO LINE 81 (1989)).

38. See *id.* at 1-2; see also DUNN, *supra* note 7, at 6-11.

39. See DAVIS, *supra* note 32, at 2-3.

40. See RINGER, *supra* note 6, at 570-71.

41. *Id.*

42. See Montoya, *supra* note 37, at 2.

43. See DAVIS, *supra* note 32, at 3.

empted and only had to pay a head tax to come into the United States.<sup>44</sup>

Of course, the overall history of non-hostility at the level of foreign policy does not mean that social attitudes of Anglo-whites settling in the former Mexican lands were friendly or non-prejudiced. Anglo-American white supremacist attitudes in the post-Treaty period provide a historical backdrop to the contemporary racial tensions surrounding the policing of the U.S.-Mexico border. For example, Anglo whites used sexual imagery to identify those Mexicans they encountered in places known today as California, New Mexico, and Arizona. Nineteenth century white travelers either referred to all Mexicans as being "sexually debased," or to Mexican women as having little virtue.<sup>45</sup> Early Anglo-Americans commonly referred to the Mexican population as "indolent, ignorant and backward,"<sup>46</sup> while a writer of the period referred to all "darker colored" races as being "inferior and syphilitic."<sup>47</sup> Such social attitudes may explain the historical pattern of the U.S.-Mexico relationship as one of welcoming Mexicans with one arm, when labor is needed, and pushing them away with the other, when real (white) Americans sense the threat of being overwhelmed by the presence of the darker races. Notably, the stereotypical racial images seem to have prevailed as part of the legacy of cultural misunderstandings that accompanied the creation of the U.S.-Mexico border.

### *B. Open or Closed? Contemporary Border Facts and Attitudes.*

In my search for the evidence of social injustice and despair that has been generated by the confluence of various laws and policies that underlie official public and private operations at the U.S.-Mexico border, I have encountered discourses, literature, and even everyday conversation infused with a deeply prejudiced language alluding to "illegal aliens,"<sup>48</sup> "wetbacks,"<sup>49</sup> "smugglers," "criminals," and "cheap

44. *Id.*

45. See JOHN D' EMILIO & ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* 88 (1989) (discussing the reactions of white settlers to the display of native culture in public courtship).

46. Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife,"* 4 MICH. J. RACE & L. 39, 47 n.31 (1998) (quoting DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* 341 (1992)).

47. D' EMILIO & FREEDMAN, *supra* note 45, at 88.

48. See generally Johnson, *supra* note 16 (providing a critical analysis of the contemporary use of the term "aliens" to refer to undocumented Mexican immigrants).

49. The term "wetback" or "wets" derogatorily refers to those who swim across the Rio Grande to reach United States soil. The term is subject to use by bigoted speakers who use it in reference to all Mexicans/Latinas/os, whether United States citizens or not. See Arriola, *Lat Crit*



servants and babysitters.”<sup>50</sup> These racial stereotypes attest to the bitter tensions of race, class, and gender that enliven the border and the social, political, and economic hierarchies it has historically maintained between the United States and Mexico. These hierarchies exist because the border is constantly maintained by the force of law and public policy. Every day of the year, twenty-four hours a day, the United States Border Patrol is on the job enforcing the immigration laws and policies. These laws prohibit entrance into the United States by people who do not have valid visas<sup>51</sup> or other documentation to prove they intend to return shortly back to Mexico.<sup>52</sup>

Of course, day in and day out, hundreds do cross legally at every one of the fifteen Mexican border cities linked to a sister city on United States soil.<sup>53</sup> The legitimate crossers may include the Mexican

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*Theory*, *supra* note 22, at 250-51 (discussing the film *Lone Star* and the use of the term “wetback” to describe a character who had secretly crossed the Rio Grande). The stereotype reference to “wetbacks” entered national discourse in 1954 when anti-immigrant hostilities directed towards Mexicans birthed “Operation Wetback,” a military operation that was aimed at removing Mexicans from the United States and securing the border against invasions from the South. See DAVIS, *supra* note 32, at 23-25 (recording the humiliating experiences of a woman swept up by the forces of Operation Wetback).

50. See generally Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: “Where Can You Find Good Help These Days?”*, 53 U. MIAMI L. REV. 1045 (1999).

51. A visa grants a person a stay in a foreign country for a set time to travel, study, or make purchases. Every country has its definitions and categories of allowable temporary stays. Once the temporary resident remains in the foreign country beyond the visa’s expiration date he or she is considered an illegal immigrant. If working without permission, the person is an undocumented worker. See *Immigration (USA) FAQ: F, Practical Training, K, L & Visitors Visa questions and answers (Part 5 of 6)* (archived Dec. 21, 1997)

<<http://www.cs.uu.nl/wais/html/na-dir/us-visa-faq/part5.html>> (answering numerous questions regarding the requirements for obtaining a visa).

52. Thousands have found ways to get across the border with “acceptable” INS ruses. One woman was accustomed to walking the bridge everyday with a Sears, Roebuck & Co. layaway slip in her pocket and the exact amount of money in her pocket to make a payment. She was rarely questioned by Customs officers and when they did she would produce the Sears layaway slip. See DOUGLAS KENT HALL, *THE BORDER: LIFE ON THE LINE* 50 (1988).

53. The pairs are:

Tijuana, BC—San Diego, CA  
 Tecate, BC—Tecate, CA,  
 Mexicali, BC—Calexico, CA,  
 San Luis Rio Colorado, SON—Yuma, AZ;  
 Nogales, SON—Nogales, AZ;;  
 Agua Prieta, SON—Douglas, AZ;  
 Palomas, CHIH—Columbus, NM;  
 Ciudad Juárez, CHIH—El Paso, TX;  
 Ojinaga, CHIH—Presidio, TX;  
 Ciudad Acuña, COAH—Del Rio, TX;  
 Piedras Negras, COAH—Eagle Pass, TX;  
 Nuevo Laredo, TAMPAS—Laredo, TX;  
 Colombia, NL—Laredo, TX;

domestic servant coming to work in an American household, who passes with her INS-issued border crossing card for temporary work. The Immigration Reform and Control Act of 1986 ("IRCA")<sup>54</sup> requires proof of United States citizenship or valid residence to be legally hired,<sup>55</sup> yet IRCA creates a specific loophole for the temporary passage of Mexican domestic servants who cross daily to clean or baby-sit in American homes.<sup>56</sup> One former domestic servant who eventually became a *maquiladora* employee in Tijuana reminisced about the time when a border crossing card could get one as far as Los Angeles, "and nobody hassled you like they do now."<sup>57</sup> The choice of domestic service often differs little from working in a *maquiladora*, although one avoids dealing with the border crossing hassles in the latter. For example, Maria Luisa, a peasant who grew up in the state of Durango, started working for American employers doing household chores when she was fourteen. When Maria Luisa was older she obtained a border crossing card. She went back and forth for years doing domestic work across the border until her early twenties when she met her husband in Tijuana. When she wanted to settle down in Tijuana, the first work she found was also as a domestic servant until her boyfriend put her in touch with an uncle who was a supervisor at a *maquiladora*.<sup>58</sup>

Legitimate crossers also include working-class residents of Mexican border cities who work in the United States but whose low wages can

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Reynosa, TAMPS—McAllen (Hidalgo), TX;

Matamoros, TAMPS—Brownsville, TX.

THE TIMES ATLAS OF THE WORLD, plate 115 (9th ed. 1994).

54. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.) [hereinafter IRCA].

55. INS Press Release (visited June 19, 1996) <<http://gopher.usdoj.gov/ins/newsrels/229.html>>. Under IRCA the employer must fill out INS Form I-9, the Employment Eligibility Verification form, which attests the eligibility of the person hired either as a United States citizen or a permanent legal resident, or some other non-immigrant visa for work in specialty occupations (i.e., H-1B which is designed for professionals or members of "specialty occupations"). *Id.* Other visas include the J1 exchange visitor visa which is designed for cultural or educational exchange for teaching, training, or research. Baker & McKenzie, *Fall 1995 Update: Special Edition, The New Immigration Bill, H.R. 2202* (Oct. 24, 1995).

56. See 8 C.F.R. § 274a.1(h) (1995) (exempting "casual employment by individuals who provide domestic service in a private home that is sporadic, irregular, or intermittent"). For a critical view of the impact of this hiring pattern on Mexican women's lives, see Nathan, *supra* note 12, at 53-62; see also Vicki L. Ruiz, *By the Day or Week: Mexicana Domestic Workers in El Paso, Texas*, in "TO TOIL THE LIVELONG DAY": AMERICA'S WOMEN AT WORK, 1780-1980, 269-83 (detailing the harsh life of domestic workers in El Paso, Texas).

57. See PRIETO, *supra* note 1, at 50. The words are of "Maria Luisa," whose interview appears in Prieto's study. See *id.*

58. See *id.*

get them bigger and cheaper housing on the Mexico side.<sup>59</sup> In the twin border cities of El Paso, Texas, and Ciudad Juárez, Chihuahua, a middle to upper class American citizen may live on the United States side and work as a supervisor in a *maquiladora* on the Mexico side. However, a United States working-class citizen may work on the United States side in a lower-paying job but live on the Mexico side due to more affordable housing.<sup>60</sup> Obviously, to some it is a vague or fluid border. This image is reflected in the words of Bertha Villalpando, a fifty-eight year old naturalized citizen whose job is in El Paso and home is in Ciudad Juárez, who said, "[w]e know there's a boundary line somewhere."<sup>61</sup> For others, the border is an inconvenience that must be passed. Juan de Compostela owned a jewelry store in Los Angeles. He traveled back into Mexico to bring back his brother, sister-in-law, and his six-year-old niece. The Border Patrol caught him:

This is the third time we've tried. So far we've gone on our own without the services of a *coyote*. We've decided to try seven times, and from there we'll make new plans. . . . In our village there is no work for my brother or sister-in-law, and over there they can both work, and my niece will get a better education.<sup>62</sup>

For the working-poor and the desperate-to-work, the border is not open at all; but, it is porous. Thousands cross or try to cross illegally. They either will or will not be caught by the Border Patrol.<sup>63</sup> Being caught does not discourage the would-be-crosser. Rather, he will wait for a better time to climb the fence, swim the river in hopes of reaching the land of opportunity, or just go "back to work."<sup>64</sup> The illegal

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59. See Enrique Rangel, *Betting Money on the Border*, DALLAS MORNING NEWS, June 2, 1996, at 1H.

60. See *id.*

61. *Id.* Some describe the recent patterns of surveillance at the border as a "war zone," while others do not see it as a problem to cross despite the introduction of tighter enforcement practices in recent years. See, e.g., Carol Morello, *Tighter U.S. Border No Problem for "Coyotes,"* HOUSTON CHRON., May 19, 1996 (describing "coyotes" who smuggle Mexicans across the border). There is one story about a Mexican woman whom, like thousands of others, waded the Rio Grande every morning for ten years. See HALL, *supra* note 52, at 50. She would slip into the restroom of a fast-food restaurant and walk out dressed and ready for work. See *id.*

62. DAVIS, *supra* note 32, at 110.

63. See Sam Walker, *Beefier Border Patrol Hasn't Weakened Allure of a U.S. Job*, CHRISTIAN SCI. MON., Dec. 19, 1996, at 1; Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: *The Context of Agricultural Workers within the Rural Economy*, 26 N.M. L. REV. 9, 50 (1996); see also *infra* Part V.B.

64. See J. Andrew Curliss, *On Their Guard*, DALLAS MORNING NEWS, Feb. 2, 1997, at 47A. These are the words of Steve Garcia, a thirty-nine-year-old bricklayer who had been in the United States for three years and went back to see his family during the holidays. *Id.* When interviewed by a reporter in Matamoros, Tamaulipas, the sister city to Brownsville, Texas, Garcia was looking out for a possible pass point in the Rio Grande. *Id.*

border-crossers, whose identities are often casually equated in official and journalistic accounts with drug smugglers and/or *coyotes* (people smugglers), are the object of the Border Patrol whose agents acknowledge that most illegal border-crossers are looking for work.<sup>65</sup>

No one can tell exactly how many succeed, although the statistics on the number of apprehensions give some indication. In 1996, under the Operation Gatekeep program launched in 1994, the San Diego Border sector alone had 487,682 apprehensions, while a record 67,000 deportations were reported by the INS in the same year.<sup>66</sup> Yet the numbers fail to reflect the complexity of border crossing and the fact that multiple crossings and multiple apprehensions are the norm. Nor do the numbers explain the migrant's attraction to take a risk for a better life—when he compares his life to that of the poorest *bracero* in a United States *colonia* he sees material goods that are unavailable to his own family, like running water and indoor toilets, or televisions and automatic washing machines.<sup>67</sup> Crossing and being caught once does not dissuade either the persistent migrant or the “coyote” who will guide him across the border. Seventeen-year-old José Alejo confidently asserted, “[w]e’re going to pass, anyway. . . [t]hey can stop some. But then can’t stop us all.”<sup>68</sup> The words of a Border Patrol agent say it all: “Its control out of control.”<sup>69</sup>

### C. *Migrants, Workers, Refugees and Border Cops in a Recently Militarized Zone*

Today, there are huge risks for those who take the attitude that border surveillance is not a serious impediment to crossing into the United States to become an undocumented resident and/or worker. Many of those risks involve the threat of serious injury and death. Physically crossing *al otro lado*<sup>70</sup> without the right papers forces mi-

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65. Border Patrol agent Thomas L. Harrison of Presidio, Texas, also known as the Marfa sector, stated:

[t]he people coming in looking for work, which 99 percent of them are, are going to go the easiest way they can. They’re going to go to places like the Rio Grande Valley, where they can find work in ten or twenty miles. They’re going to San Diego, where they can slip through and hide in Los Angeles. They’re not going to come here and walk over mountains that are as high as eighty-four hundred feet.

HALL, *supra* note 52, at 95.

66. Marcus Stern, *Border Strategy Fails to Stem Tide of Crossers*, SAN DIEGO TRIB., Jan. 24, 1997; *Record 67,000 Illegal Immigrants Deported*, SAN DIEGO DAILY TRANSCRIPT, Oct. 28, 1996 (on file with author).

67. See HALL, *supra* note 52, at 16.

68. See Morello, *supra* note 61.

69. HALL, *supra* note 52, at 21.

70. *Al otro lado* means the other side.

grant workers to try to avoid the Border Patrol by attempting to cross perilous mountain ranges and desert lands where there is neither water, food, nor protection from the extreme weather conditions of the Southwestern United States. In 1996, a twenty-four year old peasant named Eliseo Santos Carmona from the state of Oaxaca was killed after he plunged off a 120-foot cliff while running from a United States border agent in San Diego County.<sup>71</sup> Modesta Lopez, a twenty-seven year old, from the state of Morelia, was found two weeks after the group she was travelling with in a rural section of California abandoned her because she had become too weak from going without food or water for three days.<sup>72</sup> In January of 1997, eight people tried to cross into San Diego, hiked a mountain range at night, and froze to death doing so.<sup>73</sup> Later in August, a group of six people (five men and one woman) were found in a ten-foot drainage ditch that had suddenly flooded during a flash storm.<sup>74</sup>

The factors that account for the life threatening characteristics of a border crossing are the aforementioned extreme weather conditions, the deaths by drowning in the Rio Grande area, and the increased militarized border of recent decades.<sup>75</sup> The typical causes of death are hypothermia, dehydration, and drowning.<sup>76</sup> A typical news account may highlight the tragedies of human death that occur at the border. However, it is generally uncritical of a discourse that casually merges the illegalities of crossing the border to find work with smuggling drugs. The result is a stream of reporting that often does not separate the problem of Mexican "terrorist activity," from "10,000 attempted illegal crossings" that include people trying to reach "baby-sitting" or other "unskilled-labor jobs on the United States side"<sup>77</sup> to the hot

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71. See Ray Sánchez, *Mexicans Risk Harm, Death to Reach U.S.*, MIAMI HERALD, INT'L ED. (Apr. 10, 1996) <<http://nafta.tamin.edu/cgi-shl/as-web.exe?ftax96.ask+D+3650433>>.

72. See *id.*

73. See *Flood Kills 6 Who Tried to Cross Border*, NATIONAL NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS-NEWS (NNIRR-NEWS) (Aug. 11, 1997) (visited Mar. 10, 2000) <[http://www.nnirr.org/nnirr/news/border\\_issues/970811-floods.html](http://www.nnirr.org/nnirr/news/border_issues/970811-floods.html)>; Anne Marie O'Connor, *Tightened Border Forcing Mexicans onto Deadly Path*, MIAMI HERALD, INT'L ED. (Jan. 18, 1997) <<http://nafta.tamin.edu/cgi-shl/as-web.exe?ftax97.ask+D+685558>>.

74. See *id.*

75. See *infra* Part VI; see also *infra* Part V.

76. See Georgina Gatsiopoulos, *U.S. Policy Blamed For Migrants' Deaths*, EL FINANCIERO WEEKLY, INT'L (Mexico City) (Feb. 2, 1997) <[http://nafta.tamtu.edu/cgi-shl/as-web.exe?ftax97.ask+D\\_1544142](http://nafta.tamtu.edu/cgi-shl/as-web.exe?ftax97.ask+D_1544142)>.

77. Marilyn Hadrill, *Crossing the Line*, DALLAS MORNING NEWS, Jan. 2, 1996, at 1A (explaining the increasing violence incurred when immigrants attempt to cross the border).

story of how we are "losing America" to the "Mexican smugglers who are flooding America with [drugs] and undocumented immigrants."<sup>78</sup>

These stories only hint at the heightened level of despair created at the border by the illegal crossing and the sensational rhetoric that feeds the anti-immigrant hostilities of Americans towards those perceived to be flooding the land with "dangerous criminals, smugglers and drugs."<sup>79</sup> Arguably, the discourse of fear allows the American public to ignore the costs of a militarized border in the recorded human tragedies. A recent study by the University of Houston documented 1,185 deaths due to border crossings from 1993-1996 alone, 844 of those in Texas by drowning in the Rio Grande, and a high majority of the victims as male peasants.<sup>80</sup> The male migrants typically leave Mexico's interior and its economic woes. These immigrants are often peasants and farmers whose *ejidos*<sup>81</sup> have been privatized under Mexican land reforms. It is a tragic testament to the death of the Bracero Program<sup>82</sup> that once allowed the influx of temporary agricultural workers from Mexico.<sup>83</sup> While the welcoming policies of the past have died, the peasant's tradition of travelling to *El Norte* to find work has not. Some of the border-crossers even know of the risks they are taking. Martin Facio, thirty-three, knew of the extreme weather conditions that affect the Tijuana-San Diego area in the winter, and crossed anyway. "I heard the warnings, but I don't care," he said from behind the bars at the INS detention center where he was being held for deportation back to Mexico. "In Mexico, there is no work."<sup>84</sup>

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78. See, e.g., *Border Ranchers Losing War to Drug Smugglers*, SAN ANTONIO EXPRESS-NEWS, July 7, 1996, at 10A (detailing how border ranchers are losing their property to drug smugglers who are getting rich off of their illegal ventures). But see Sam Walker, *Drug-Trade Boom Tests Border Town's Historic Mexican Ties*, CHRISTIAN SCI. MON., Mar. 25, 1997, at 3 (identifying the inextricable connection at the border between two nations, two cities and a history of cultural cooperation that has been affected by the unavoidable realities of the drug trade).

79. See *infra* Part V.

80. See *Study Links Border Patrol Enforcement with Migrant Deaths*, NNIRR NEWS (Aug. 13, 1997) <<http://www.nnirr.org/nnirr/news/970813-migrant-death.html>>; *Migrant Deaths at the U.S.-Mexico Border, 1985-1994*, 18-40 (1996) [hereinafter *Migrant Deaths*] (on file with author).

81. See PEÑA, *supra* note 3, at 320-21 (discussing land reform by the conservative Salinista administration which promoted the privatization of the *paraestatal*, Mexican communal agrarian lands).

82. *Id.* (discussing the agricultural guest worker Bracero Program which operated from 1942-1964).

83. See DAVIS, *supra* note 32, at 3. Mexican officials have proposed a re-introduction of the Bracero Program as a way of preventing further deaths from illegal border crossings in a heavily militarized zone. See Julia Scheeres, *Legal Farm Work Needed*, EL FINANCIERO WEEKLY INT'L, Sept. 22, 1996 (on file with author).

84. *U.S., Mexico Give Winter Warnings to Undocumented Immigrants*, SAN ANTONIO EXP. NEWS, Feb. 12, 1997, at 12A (on file with author).

Most of the people attempting to cross without documentation, and who are destitute either because they are fleeing poverty or have been robbed on the way to the border are from Mexico.<sup>85</sup> In recent years, an increasing number of border-crossers have come via Central and South America because of political turmoil or the extreme poverty resulting from natural disasters.<sup>86</sup> The Latina migrant is most likely to have the opportunity to find work in a border town's *maquiladora* or as a domestic servant on either side. While border-crossers are both male and female, the reports of deadly consequences arising from the more militarized efforts to apprehend and deport undocumented workers from Mexico suggest that most border-crossers are male.<sup>87</sup>

The highly feminized workforce of the *maquiladoras*<sup>88</sup> also suggests that most of the border immigrants who attempt to cross are male, illustrating the few opportunities for them to find livable wages in a Mexican border town. They contemplate and sometimes repeatedly try to cross into the United States at a border that has become increasingly hostile to the Mexican citizen. Encouraged by a conservative presidency, Congress made it possible in the 1980s to expand border activities through a "beefed up" INS that now routinely uses high-tech night-vision equipment, helicopters, expanded concrete and steel barriers, and hundreds more Border Patrol agents<sup>89</sup> with the backup of United States military forces. In 1996 alone, over 400 members of the United States Army, Marine Corps, and the California National Guard were deployed as part of a Joint Task force aimed at policing the U.S.-Mexico border on an anti-drug trafficking campaign.<sup>90</sup> The high number of deaths caused by border crossings, as well as a range of other practices engaged in by the INS, have begun to invite the criticism of international watches for human rights abuses in Mexico and around the world.<sup>91</sup> In 1996, Mexican lawmakers demanded that their president "make public a detailed list of 'human rights viola-

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85. See HALL, *supra* note 52, at 45-67.

86. See Walker & Stern, *Mistaken Moves*, *supra* note 14, at A-1.

87. See *supra* note 80 and accompanying text.

88. See PEÑA, *supra* note 3, at 55-68; PRIETO, *supra* note 1, at xix-xxvi.

89. See *infra* Part V.

90. See *More Drug Patrols Halted Along Border*, DALLAS MORNING NEWS, July 12, 1997, at 35A; *House Votes for U.S. Troops to Aid Mexico Border Patrol Military Would Help with Inspections, Detainment*, DALLAS MORNING NEWS, June 21, 1997, at 31A. See also notes 340-353 and accompanying text.

91. See Carlos Byars, *Increased Border Patrol Not Way to Go, Activists Say*, HOUSTON CHRON., Jan. 26, 1997, at A34; see also *Americas Watch, Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, in AMERICAS WATCH REPORT, DIVISION OF HUMAN RIGHTS WATCH 9-35 (May 1992); *Human Rights Concerns in the Border Region with Mexico*, AMNESTY INTERNATIONAL REPORT 18-27 (May 1998).

tions' committed against Mexicans in the past five years."<sup>92</sup> The demand described not only the existence of a "low-intensity-war against Mexican citizens in the United States," but also an "anti-immigrant climate."<sup>93</sup> Other charges included the endorsement of activities or anti-immigrant laws<sup>94</sup> by California Governor Pete Wilson that were labeled "racist."<sup>95</sup>

The vast socio-cultural problems at the border and their origins are elusive. Some issues like the status of women who work in the thousands of American and European owned *maquiladoras* and their families are intimately connected to the issue of the constant and virtually unstoppable flow of migrants from Mexico and Central America's interior to the border cities, fleeing poverty and political terrorism,<sup>96</sup> in search of work, to re-connect with family or for adventure.<sup>97</sup> Being without money, interest in returning to barren homelands, or a job in a *maquiladora*, they may wait in cheap hotels, by riverbeds, on ranchlands, or in the illegal housing settlements known on the Texas side of the border as the *colonias*.<sup>98</sup> For both female and male migrants, the overall impetus to migrate to the United States

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92. Mark Fineman, *Mexico Denounces U.S. Policy; Lawmakers Decry Violent, 'racist' Treatment of Immigrants*, HOUSTON CHRON., Apr. 10, 1996, at 14.

93. *Id.*

94. For a discussion on these legislative developments, see Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1558-74 (1996) (providing a critical analysis of California's Proposition 187, which was aimed at restricting the receipt of public benefits by undocumented criminals and which Governor Pete Wilson used in his re-election campaign to argue that the ready availability of benefits was the main draw of illegal "aliens" into California). See also Gregorio T. v. Pete Wilson, No. 94-7569, 1998 WL 141325, at \*1 (C.D. Cal. Mar. 13, 1998) (striking down as unconstitutional provisions of voter-passed law that denied education, social services and health benefits to illegal immigrants).

95. Fineman, *supra* note 92, at A14.

96. For a poignant novel illustrating the human dramas for Mexican-Americans who came into contact with, or helped harbor El Salvadorans fleeing political terrorism, see DEMETRIA MARTÍNEZ, *MOTHER TONGUE* (1994). The INS reported only 260 approved asylum petitions for people from El Salvador in 1990. See *INS Asylum Statistics*, Table 28 (visited Jan. 22, 1999) <<http://www.ins.usdoj.gov/graphics/aboutins/statistics/statyrbook96/table28.xls>>. However, in 1990, there were an estimated 393,898 persons from El Salvador illegally in the United States, and next to Mexico it was the third fastest growing country of origin for illegal immigration. See *INS Immigration Fact Sheet* (visited Jan. 22, 1999) <<http://www.ins.usdot.gov/graphics/aboutins/statistics/299.html>>.

97. See DAVIS, *supra* note 32, at 35-38. In a chapter titled "The Reasons for Going," Davis summarizes the themes as including the greater ability to support a family, to get married, to educate one's children, to pay off a debt, to start a business, to buy property, to build a house, for adventure, or simply to make a better life. *Id.*

98. See generally PETER M. WARD, *COLONIAS AND PUBLIC POLICY IN TEXAS AND MEXICO: URBANIZATION BY STEALTH* (1999) (describing the "colonias" squatter settlements along the Texas-Mexico border as low-income housing areas built on cheaply acquired land lacking infrastructure such as roads, water, and sewer services).



border is obviously the lack of work in Mexico's interior economy or the search for work in the United States as a field hand, day laborer, or any other menial worker, including domestic service, or in the *maquiladoras*. Unfortunately, *their* reality is never part of the social discourse of the country they so desire to come to.

*D. Bordered Attitudes, Foreshadowing the Maquiladora Presence, and Using Latina Critical Legal Theory to Examine the Open and Closed Faces of the U.S.-Mexico Border.*

Even while I was working they moved the sub assembly, where they assembled small parts, to Mexico. My supervisor went down there and worked and he came back and told me they were working young women down there. And when I went to Mexico, I saw exactly what he was talking about. They work real young people. To me it was just devastating to think that companies from this country would go down there and abuse people like they do. *And I can understand why those people come across the border. If I was over there, I'd do the same thing.*<sup>99</sup>

—Shirley Reinhardt, a native of eastern Tennessee.

The work was unpleasant. My hands really ached, every day worked to the bone by the speed of the work. My hands hurt so much that when I got home I couldn't do the housework; I couldn't even change my son's diapers.<sup>100</sup>

—Elena, a *maquiladora* worker.

*1. A Critical View of Life on the Border.*

I have previously argued that narratives and stories, even those gleaned from popular culture, can humanize the law, that is, flesh out its impact on people's lives.<sup>101</sup> In the context of exploring the breadth of the social injustices at the U.S.-Mexico border, which teems with opportunities for a better life as well as for the high risks of death at

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99. Interview with Shirley Reinhardt in video-letter produced by Anne Lewis for Morristown Project (1999) (emphasis added).

100. PRIETO, *supra* note 1, at 9.

101. See, e.g., Arriola, *LatCrit Theory*, *supra* note 22, at 256-62 (discussing the role of narratives in exposing the racially discriminatory impact of the INS workplace raid). Compare Paul W. Valentine & Ruben Castaneda, *INS Arrests 71 During 2 Raids in Maryland: Tips Pointed Agents to Bladensburg Firms*, WASH. POST, Mar. 26, 1998, at D01, D08 (discussing the unfair targeting of Hispanic workers in Maryland worksites), with Curt Anderson, *GOP Wants to Expand Alien Farmers*, AP FARM WRITER, Mar. 21, 1998 (visited Aug. 27, 1998) <<http://search.washingtonpost.com/wpsrv/wapo/19980321/v000504-032198-idx.html>> (discussing proposals made in the federal Agriculture Committee to introduce a guest-worker bill in the face of an apple-picking crisis in the state of Washington).

the hands of United States agents, storytelling is crucial.<sup>102</sup> Arguably, taking on the subject of the border as a whole by deconstructing the interrelationship between routine border patrol enforcement, which appears mostly to impact male migrants, and the transnational relocation of American companies who will mostly employ Latinas, is not possible. It will either be too much or too little in my effort to grasp fully the interrelationships between life, labor, and law on both sides of the border. In fact, taking on such a project feels like a transgressive act, one that violates the intellectual or political borders discouraging me from centralizing the experiences of Mexican citizens while I presume to analyze the impact of American law and policy.<sup>103</sup> But for a critical legal theorist, this is a worthy transgressive act.

Undoubtedly, to open the door to the study of the border is to invite an overwhelming sense of defeatism. This is the daunting task of deconstructing all of what is embedded in the casual mention of "life on the border." To residents of the Southwest, the short phrase means so much, although its interpretation will obviously vary depending upon the person's own identity. Among the dominant classes, for example, including Anglo-whites and assimilated Mexican-Americans, or other non-Mexicans, the reference evokes images of the opportunities for cheap imported products and a high return on the American dollar for resorts, hotels, liquor, and weekend getaways. At one time an American's crossing into Mexico also meant the quick abortion one could not obtain in the United States or even a quick divorce.<sup>104</sup> But, a look at the border from a human rights or social justice standpoint triggers a more complex picture. Many are able to ignore it because a host of common stereotypes effectively dehumanize the identity of the border resident/Mexican citizen into faceless "illegals,"<sup>105</sup> "dumb Mexicans,"<sup>106</sup> "wets"<sup>107</sup> or "wetbacks," and "difficult

102. See *infra* Part V (discussing the accidental killing of Ezequiel Hernández, Jr. by United States Marines patrolling border for drug trafficking). See also *Hernández Memorial Gallery* (visited Jan. 22, 1999) <<http://www.mapinc.org/LC/hernandez/gallery>>.

103. Of course, a nation's laws and legal practices can be analyzed for how they violate broader human rights, and for how they perpetuate harmful gendered attitudes and women's subordination. See Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 616-34 (1991); see also Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOKLYN J. INT'L L. 605, 667-74, nn.225-53 (1996).

104. See *Rosenstiel v. Rosenstiel*, 262 N.Y.S.2d 86, 87-92 (1965).

105. See *infra* Part V.

106. See, e.g., PEÑA, *supra* note 3, at 88, (referring to a Ciudad Juárez plant manager's assessment of a worker as a "old, dumb Mexican, and I mean that affectionately").

107. See generally HALL, *supra* note 52 (consistently referring to Mexicans he knew were waiting to cross the border in a photographic essay as "wets" and "wetbacks").

to train Mexican maids."<sup>108</sup> Yet, underlying these stereotypes are the voices of persons whose human needs and despair intersect with socio-economic problems that are vast, originating as they do in seemingly uncontrollable phenomena such as the culture of poverty,<sup>109</sup> legitimized corporate profiteering through the use of cheap foreign labor, and environmental abuse. The problems are compounded by limited or uncoordinated bi-governmental oversight of the corporate activities that give rise to the occupational and environmental hazards, either because of incomplete restraints or loopholes in immigration regulations,<sup>110</sup> trade agreements like NAFTA,<sup>111</sup> or lax enforcement of labor policies under Mexican law.<sup>112</sup>

The researcher of life on the border must also confront the prevailing attitude that whatever happens on the other side is of no concern to Americans, no matter how bad the problem.<sup>113</sup> I would argue, however, that some issues involving the U.S.-Mexico border cannot be ignored by the socially progressive theorist. For some people, life on the border is a constant skirting of the edges of death. Exposure to life-threatening working conditions or inhaled production chemicals are a problem.<sup>114</sup> At the very least, this is an issue of human rights or environmental racism. As the workforce in these American owned *maquiladoras* is highly feminized, the issue of women's treatment should evoke the concerns of the feminist theorist. As the women in *maquiladoras* are mostly Mexicanas or from Central and South

108. See Ruiz, *supra* note 56, at 276-78.

109. Oscar Lewis has authored classic studies on the culture of poverty. See, e.g., Oscar Lewis, *Five Families: Mexican Case Studies in the Culture of Poverty* (1975); OSCAR LEWIS, *THE CHILDREN OF SANCHEZ-AN AUTOBIOGRAPHY OF A MEXICAN FAMILY* (1979).

110. See *supra* notes 54-56 and accompanying text.

111. NAFTA has been criticized for favoring corporate investors and for condoning the mistreatment of employees by employers. See Zamora, *supra* note 23, at 426-34, nn.136-73.

112. See Allen R. Myerson, *Big Labor's Strategic Raid in Mexico*, N.Y. TIMES, Sept. 12, 1994, at D1 (noting that enforcement of Mexico's labor laws is lax); Allen R. Myerson, *U.S. Backs Mexico Law, Vexing Labor*, N.Y. TIMES, Oct. 13, 1994, at D1 (stating that "[a]lthough Mexico has tougher labor laws than the United States, American organizers say that enforcement is lax . . ."); *Save NAFTA, But Don't Roll Over*, N.Y. TIMES, Mar. 7, 1993, at A20 (noting that Mexico's labor and environmental laws are routinely violated because enforcement is lax); *A Test of Mr. Clinton's Backbone*, N.Y. TIMES, Aug. 9, 1992, § 4, at 15-16 (stating that leading Democrats have argued that "American corporations flee to Mexico 'to take advantage of cheap labor, lax enforcement of health, safety, environmental and labor law . . .'").

113. A \$30 million settlement of a lawsuit by a Dallas-company to pay families of 14 persons killed and 12 hurt in a crash on their way to a *maquiladora* was vehemently protested by an official of the Maquiladora Association. He was quoted as saying: "[t]he big question is, what's the legality of having a jury in Eagle Pass decide about something that happened in Mexico?" David Koenig, *\$30 Million Settles Mexico Workers Suit; U.S. Clothing Maker Salant*, AUSTIN AM.-STATESMAN, Aug. 17, 1999, at D1.

114. See *infra* Part IV.

America, their treatment is a concern for the Latina critical legal theorist. The question then is what is the appropriate response and how does one analyze the social justice issues of "life on the U.S.-Mexico border," with a rational and manageable approach capable of producing recommendable solutions either in law or public policy?

The problems at the U.S.-Mexico border that have expanded under NAFTA can be understood by looking closely at the *maquiladoras* for their impact on women's lives. The *maquiladoras* have overwhelmingly re-defined the socio-economic character of the borderlands culture in the last two decades.<sup>115</sup> Examining how women from the interior of Mexico are affected by their jobs in *maquiladoras* provides a lens from which to appreciate the human rights and/or environmental concerns that have been raised about the *maquiladoras* in recent years.<sup>116</sup> The gendered lens is especially useful because the opportunity to work in a *maquiladora* serves as a main attraction for poor Mexicans to migrate to the border.<sup>117</sup> I have chosen to explore the functioning of the *maquiladora* industries from a gendered perspective because their resurgence is a significant substitute for the American labor policy known as the Bracero program.<sup>118</sup> It is not coincidental that the Border Industrialization Program initiated the foreign enterprises program of the *maquiladoras* in 1965 and literally followed on the heels of the death of the Bracero program. The negligible impact of the *maquiladoras* in reducing the flow of migration from Mexico highlights one of the problematic results that opponents of NAFTA predicted from the treaty's exclusion of any migration rights by Mexican citizens: that it would unfairly impact on the right of Mexicans to travel and do absolutely *nothing* to reduce illegal border crossings.<sup>119</sup>

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115. See HONDAGNEU-SOTELO, *supra* note 20, at 10-15; see also WARD, *supra* note 98, at 22 ("Maquiladoras have become one of the bigger draws for employment [over 560,000 by 1994] along the Mexican side of the border, and services also employ a larger part of the economically active population (EAP) than in the interior of the country.").

116. See, e.g., Edward J. Williams, *The Maquiladora Industry and Environmental Degradation in the United States-Mexican Borderlands*, in INTERNATIONAL BOUNDARIES AND ENVIRONMENTAL SECURITY: FRAMEWORKS FOR REGIONAL COOPERATION 263-73 (Gerald Blake et al. eds., 1997) (noting the environmental impact on both sides of the borders because of the *maquiladoras*' unsafe and illegal disposal practices of toxic wastes).

117. See PRIETO, *supra* note 1, at 46-72.

118. See DAVIS, *supra* note 32, at 2-3; see also *infra* Part V.

119. See Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937, 941 (1994) [hereinafter Johnson, *Free Trade*].

2. *Deconstructing the Meaning of "Life on the Border" with Narratives and Latina Critical Legal Theory.*

This Symposium has asked whether contemporary critical legal theories can find a common ground in anti-subordination theory supported by shared commitments to *praxis*, or critically-based practice. To answer this question I pondered two issues: (1) the elements of a "Latina-centered" social justice theory and (2) a research method that might best help to articulate Latina critical legal theory. The first question encouraged me to explore a definition of "social justice theorizing." I assumed that a theory for social justice uses principled perspectives in the study of law, legal doctrine, institutions, and practices. Such a perspective exposes injustices under current law and policy and advocates for socio-legal reform on behalf of those oppressed by such law and policy. A theory for social justice is also critically-based, that is, it presumes that sometimes "the law" results from arbitrary and political processes. A critical legal theory for social justice further assumes that power dynamics based on sex, gender, race, ethnicity, class, religion, ideology, citizenship status, physical ability, and age are key to understanding the structure and function of American society, including its laws and legal institutions.<sup>120</sup>

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120. In the late twentieth century, shifting power dynamics produced social justice theories by feminists, critical race, and queer theorists who advocated the cause of one subordinated social group over another. Such identity politics produced fairly significant socio-legal changes, including sexual harassment law and sodomy law reform. See generally SUSAN JEFFORDS, *THE REMASCULINIZATION OF AMERICA* (1989) (providing a cultural historical analysis of the conservative, masculinized shift in American values post the civil rights and feminist movements). The turning point in the law's recognition of the claim of sexual harassment appeared in the decision of *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 73 (1986) (holding that a claim of "hostile environment sex discrimination is actionable under Title VII"); CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979) (providing the original legal theories for sexual harassment law today). On the status of sodomy law reform, see Lambda: Legal Defense and Education Fund, *State by State Sodomy Law Reform* (Jan. 27, 2000) <<http://www.lambdalegal.org/cgi-bin/pages/documents/records?records=275>>. In recent years, a lively discourse among critical race and feminist scholars has focused on the need for progressive and/or radical theorists to stop essentializing people's identities and their experiences by grounding a theory on the basis of a singular identifying trait. Critical race, feminist, and some queer theorists of color have been especially prominent in the effort to articulate more realistic models of analysis that would address the intersection of categories (e.g., race, sex, thus "racist sexism"), the multidimensional aspects of oppression, or the cosynthesis of a person's traits in a given situation, such as a violent crime and how the police responded due to unconscious coalescing prejudices. See, e.g., Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1264 (1997). The essentialism, they argued, produces the further injustice of erasing particular identities and their unique experiences of discrimination or oppression of Black and Latina women. On the discourse involving race and essentialism see generally, Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 17-19 (1995); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 591-92 (1990); Berta Esperanza Hernández-Truyol, *Borders*

Latina-centered critical legal theory could be seen as an outgrowth of the critical race feminist critique that argues that if we can focus on the injustices under law against women, or people of color, there should be room for articulating those special concerns of Latinas. But as I have noted earlier, the term "Latinas" is vulnerable to the essentialist critique.<sup>121</sup> Thus, to avoid the essentialist trap, I want to suggest that for Latina critical legal theory the term "Latinas," does not conclusively define any one particular identity or nationality. At best, the term is a starting point of analysis for exploring the issues and concerns of women of color who may be Mexican, Chicana, Puerto Rican, Cuban, South American, or Central American. It is a perspective that requires a holistic focus not only on their sex, gender, sexuality, language, and culture but also on their race, ethnicity, education, class, age, and citizenship status.<sup>122</sup>

A Latina critical legal theorist should also be prepared to transgress the metaphorical borders of intellectual opposition to using "voice" or narratives to expose the workings of the law and its potential for perpetuating oppression on certain segments of society (e.g., women of color). Critical race scholars have consistently assumed that narratives, including autobiographical reference, are essential to the task of exposing the impact of systemic racism. As Richard Delgado has argued, "it assists the cause of social transformation because it helps majority-race readers understand how they are both different from us and the same."<sup>123</sup> Similarly, many feminist and Latina critical legal theorists have recognized the role of introducing women's "voice" as a kind of praxis.<sup>124</sup>

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(En)gendered: Normativities, Latinas, and a LatCrit Paradigm, 72 N.Y.U. L. REV. 882, 920 (1997).

121. See *supra* Part I.

122. See Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103, 107 (1994) (introducing a holistic model of analysis for identity-based discrimination theory); Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 433 (1994).

123. Richard Delgado, *Coughlin's Complaint: How to Disparage Outsider Writings, One Year Later*, 82 VA. L. REV. 95, 99 (1996). See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 816 (1993). See generally George A. Martinez, *Use of Narrative in Law*, 30 RUTGERS L.J. 683 (1999) (responding to the claims of the use of narrative as an "illegitimate externalist approach to law" and as "misguided because it does not seek to ascertain the truth," but rather seeks to change the law and is hostile to reason).

124. In feminist critical theory, narrative and voice originated in the consciousness-raising methods widely used by feminist activists in the 1970s. Participants in women-only groups made the personal political by sharing stories that not only defined many issues in the women's rights movement but also exemplified the radical social transformation of giving women a voice in the movement for sex equality. See Catharine A. MacKinnon, *Consciousness Raising*, in FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 52-59 (Mary Becker et al. eds., 1994). For Latina

Does narrative help one to understand the meaning of "life on the U.S.-Mexico border?" I see the border as the daily re-enactment of political, legal, and historic relationships. Metaphorically, they function through invisible communication wires between at least two nations, approximately thirty cities, and eight to ten states on both sides of the border. There is no unifying cable defining a neat inter-connection between these various socio-legal systems, but a throbbing life rhythm runs through and around the wires making up these socio-legal systems that deeply affect the quality of life for millions of people. Many of these life rhythms run on righteous legal and political acknowledgement of the existence of a border created and maintained by the force of law, namely the recently militarized border patrol whose activities have increased the risks of an illegal crossing.<sup>125</sup> Since the 1960s, the American-owned *maquiladoras* have increasingly employed young women from destitute rural homes in the interior of Mexico to work for miserly wages in assembly plants bearing the icons of multi-national corporations ("MNCs") such as Sony Electronics, Mattel Toys, Casio Manufacturing, or Honeywell.<sup>126</sup> The law and public policy that enliven the *maquiladoras* also sustain a widespread

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critical legal theory, the use of narrative has been seen as a crucial element to the disruption of a feminist discourse that too often ignores and/or minimizes the relevance of the race/ethnicity, working-class, and/or lesbian perspectives. See generally Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1, 7 (1994) (discussing how "transculturation" creates "new options for expression, personal identity, cultural authenticity and pedagogical innovation through Latina stories and their embedded message"). This latter discourse of disruption has relied upon other nontraditional methods. For example, oral histories have enabled the inclusion of voices of women who were unable to write. The use of non-translated Spanish terms has enacted and carved out intellectual sites of resistance, or offered opportunities for intimacy and identification of experience with readers. See Montoya, *supra* note 37, at 2 n.3. Fiction, poetry, plays, and other forms of cultural production have served as tools and methods that help document the struggle for survival in a white, heterosexual, middle-class-dominated discourse, or to describe the complexity of the identity and existence of Latinas. See generally BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 14 (1984) (addressing the inter-relatedness of sex, race and class oppression in feminist theory); THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherríe Moraga & Gloria Anzaldúa eds., 1983) [hereinafter *THIS BRIDGE*] (offering several examples of authors utilizing narrative); ANZALDÚA, *supra* note 16 (presenting narratives, essays, and poetry); Aída Hurtado, *Sitios y Lenguas: Chicanas Theorize Feminisms*, HYPATIA 134-61 (1998) (providing an overview of how Chicana feminist writings address the ethnic specific ways in which gender oppression is imposed on them and their proposals for liberation); Vicki L. Ruiz, *A Promise Fulfilled: Mexican Cannery Workers in Southern California*, in *UNEQUAL SISTERS: A MULTICULTURAL READER IN U.S. WOMEN'S HISTORY* 264, 267-69 (Ellen C. Dubois & Vicki L. Ruiz eds., 1990) (using oral history to document Latina workers' lives); *CHICANA LESBIANS: THE GIRLS OUR MOTHERS WARNED US ABOUT* (Carla Trujillo ed., 1991) (a collection of Chicana lesbian narrative works).

125. See *infra* Parts II and V.

126. See Table B that gives a sampling of over 25 major United States companies with *maquiladoras* in Mexico.

corporate practice of exploitative jobs and extreme low wages without providing protection from the unsafe or dangerous working conditions, against the sexual harassment, or the pregnancy discrimination. In this author's humble opinion, narratives are the *only* way to get at the heart of the systemic abuses that have been justified in public policy or law as a "mutually beneficial economic activity"<sup>127</sup> by both nations. A critical methodology based on narratives will help produce a social justice theory that is *not just theory*: "fancy logical language games [that are] disengaged from the lived experiences and discourses of marginalized others."<sup>128</sup>

As noted earlier, the policy of an "open border," symbolized by the corporate activity that was induced by NAFTA and predecessor economic treaties, has had the ironic effect of preferring the employment of women, at the same time serving as a magnet for both men and women to leave Mexico's interior in search of work at the border. But, because the *maquiladora* jobs and wages are so divided according to stereotyped notions of "men's work" and "women's work,"<sup>129</sup> and because women are so heavily represented in the industry,<sup>130</sup> the gender attitudes perpetuated by the *maquiladoras* has also facilitated the higher unemployment of male migrants, or would be border-crossers. Yet, NAFTA supporters predicted a more stable labor economy for the Mexican working-classes and new employment opportunities that would reduce the flow of migrants to and across the border. In theory, it is the *male* migrant's problems that were being addressed by the NAFTA-induced economic activity. Consistent with historic patterns and the political environment that separated the labor migration issue from the free trade issue under NAFTA, should it not have been the thousands of typical male migrants, who would become the ideal employees of the *maquiladoras* and would remedy the problems of illegal immigration? Such predictions were apparently alluded to during NAFTA negotiations.<sup>131</sup> Instead, the socio-economic changes that were facilitated by gender attitudes have preferred the male migrants' wives, sisters, daughters, and aunts and left him, the male migrant, standing in the shadows of the *maquiladoras*, jobless, and facing bordered attitudes that tell him he is not welcome.

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127. See North American Agreement on Labor Cooperation, Sept. 14, 1993, art. 1(a) & (f), 32 I.L.M. 1503 (describing the objectives of the Agreement as to "(a) improve working conditions and living standards in each Party's territory . . . and (f) promote compliance with, and effective enforcement by each Party of, its labor law").

128. PEÑA, *supra* note 3, at 215-16.

129. See *infra* Part III, IV.

130. See *infra* Part IV.

131. See Johnson, *Free Trade*, *supra* note 119, at 177-78.



My reliance on narratives in this article, therefore, is a Latina-centered method of analysis intended to grasp as thoroughly as possible the impact of the laws and the foreign policy that are intertwined in sustaining the political economies and social realities that function at the U.S.-Mexico border. These have operated with a tendency of erasing the identities of women, men, and children who have been ignored or blatantly used and oppressed by these socio-legal systems.<sup>132</sup> These narratives may bear witness to historic conflicts between a First World and a Third World country. But, they will also attest to ignorance or at least insensitivity by the larger citizenry on both sides of the border as to the extreme nature of the inhumanities that have been wrought by the intersections of at least three sets of American law and policy: NAFTA, immigration law, and federal drug enforcement.

The task of deconstructing the meaning of life on the border, using a Latina-centered feminist critical analysis, is indeed a challenging one. The explicit public policy of both nations is to applaud the American foreign investments in Mexico that have "accelerated women's employment in Mexico."<sup>133</sup> Arguably, their high employment in these industries marks a significant modernization feature, or has created new jobs for otherwise illegal immigrants in the United States.<sup>134</sup> Also, in the abstract, transnational labor assures the American consumer lower prices for necessities and luxuries produced by the *maquiladoras*. From such an abstract view, life on the border appears to function smoothly under the law and public policy that led to NAFTA and prior trade agreements promoting cross-border foreign investments. People leave impoverished villages and find work. If they do not find housing they create it for themselves.<sup>135</sup> If fired from a job, or pushed out, they manage to cross into the United States and create other shadow economies. But, the niceties of the legal jargon and political rhetoric do not easily reveal the human drama that underlies this historic economic conflict and inter-dependency between Mexico and the United States, nor does the abstract concern itself with the *lives* of the people without whom there would be no "off-

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132. For a biting critique of Americans' ignorance of the "life on the border" affected by the confluence of socio-economic attitudes, especially those fostered by NAFTA, see LUIS ALBERTO URREA, *BY THE LAKE OF SLEEPING CHILDREN: THE SECRET LIFE OF THE MEXICAN BORDER* 47-61 (1996). The book describes the harsh existence of Tijuana's poorest of the poor—the people who live off of the remains thrown into the city dump of a border town. *Id.*

133. HONDAGNEU-SOTELO, *supra* note 20, at 10-15.

134. See Johnson, *Free Trade*, *supra* note 119, at 978 (discussing the advantages and disadvantages of NAFTA).

135. See *infra* Part IV.C. See generally WARD, *supra* note 98.

shore assemblies” or “foreign manufacturing.” Therefore, we need a perspective that is grounded in social justice, one that searches for the “voices of the ghosts in the machines.”<sup>136</sup> These voices are of workers, of people entitled to the minimum human rights of food, shelter, clothing, education, and medical care. A human rights perspective based on women’s narratives is able to capture graphically the tremendous social conflict and pain that is also a byproduct of the wildly “successful” NAFTA along with the expansion of the *maquiladora* program at the border. The next section explores that conflict within the corporate activities that have spawned under the public policy that encourages United States foreign investments in Mexico.

### III. GENDER AT WORK—THE *MAQUILADORA* INDUSTRIES

Each line of workers—only women work in this plant—has a belt that conveys the full box to the press, where a number of women either glue or screw the cassettes together. On each full box they put a note with a number that tells them who assembled the cassettes, and if any of them are faulty, they reject them and we have to do them over again. The work is very monotonous! I could do over 800 cassettes a day, although the number varied according to which size cassette I had to assemble on any given day.<sup>137</sup>

—Angelita, a *maquiladora* worker.

One day I just couldn’t go on, and I told the supervisor that I wasn’t going to work anymore, that my hands just couldn’t take it. “No,” he said, “wait until quitting time. Don’t you see that the dolls are going to stack up on your co-workers?” . . . I tried to continue working, but I went very slowly, because my hands hurt so much.”<sup>138</sup>

—Elena, a *maquiladora* worker.

#### A. *The Maquiladoras: Licensed to Exploit, Profit, and Oppress*

It is not difficult to pick out the setting of a *maquiladora* in a Mexican border city. Their physical infrastructure broadcasts power: state-of-the-art manufacturing, assembly and packing plants, modern industrial parks, huge truck parking facilities, powerful electric lights, massive water tanks, and in some, beautifully landscaped exteriors. The *maquiladora* zone is served by large highways, railroad tracks, and trucking terminals. Small airports serve trafficking between sister cit-

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136. PEÑA, *supra* note 3, at 106.

137. PRIETO, *supra* note 1, at 4.

138. *Id.* at 9.

ies' twin plants.<sup>139</sup> Warehouses and assembly buildings are policed by guards and officials, who watch day, night, and weekends the entrances of grounds surrounded by tall chain link fences. The atmosphere communicates efficiency and the import and export movement runs as smoothly as possible. The loud sounds of machinery can be heard from a few buildings even late on a Saturday, giving the impression of a twenty-four hour operation. Across the street, in contrast, there are literally rows and rows of tiny shacks mixed in with the occasional string of company houses on unpaved streets. Some of the shacks in the *colonias* are made of tar paper, cast off pieces of industrial waste, cement blocks, and cardboard. The nicer company houses are brightly painted, but all are hovels in comparison to the wealth and power that emanates from the small industrial city of *maquiladoras*.<sup>140</sup>

As of April 1999, there were 4,235 *maquiladoras* operating in Mexico.<sup>141</sup> These industries were initiated as part of the Border Industrialization Program, a bi-lateral predecessor to NAFTA negotiated between Mexico and the United States in 1965.<sup>142</sup> Their name is derived from *maquila* that once referred to the miller's practice of keeping a portion of the grain as a form of payment. Today, the term *maquiladora* refers to the factories on Mexican soil that assemble raw material components of foreign-owned enterprises, most of which have been manufactured in America.<sup>143</sup> Generally, they share the following characteristics:

- (1) being American subsidiaries or contract affiliates under Mexican or foreign ownership;
- (2) principally engaged in the assembly of components (e.g., radio cassettes, television, small appliances), the processing of primary materials or the production of intermediate or final products;
- (3) that import most or all primary materials and components from American plants and re-export them to the United States; and that
- (4) are labor intensive.<sup>144</sup>

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139. See Williams, *supra* note 116, at 263-65. The term "twin plants" describes the relationship between an assembly plant on the Mexican side and a smaller processing plant on the American side, usually in the adjoining border city. *Id.* at 264.

140. These are the author's observations from a trip to Ciudad Acuña, sister city of Del Rio, Texas. See Dan La Botz, *Girl's Murder Sad Symbol of Corporate Power, Child Labor, Female Exploitation on the Border, Police Say Murder is a Mystery-It's Not*, 4 MLNA (on file with author).

141. See *Maquiladoras, Current Statistics*, 4 MLNA 11 (1999) (on file with author).

142. PEÑA, *supra* note 3, at 6; see also *infra* Part V.

143. See PRIETO, *supra* note 1, at xxiii.

144. See also PEÑA, *supra* note 3, at 6.

The *maquiladoras* are also repressive technological and management systems that in just a few decades have transformed the economic, political, and ecological landscapes of the Southwestern region we know as the U.S.-Mexico border. They have been labeled “the terror of the machine,” the historic legacy to the industrialization philosophy of Henry Ford, who introduced automation and the segmentation of workers into unthinking “factory idiots.”<sup>145</sup> At their core, the *maquiladoras* do seem to reproduce that mastermind labor philosophy, which viewed it essential for the competitive manufacturer in a capitalist labor economy to strip the worker of any independent possession of skill, knowledge, and power over the end product in order to achieve mass output.<sup>146</sup> The less the worker knows about the specific connection of a task to another, the better for the manufacturer since thinking prevents high-speed and mass production:

I handle thousands and thousands of pieces of card stock daily. I do up to ninety-five or one hundred boxes of 260 cassettes. That is I pack some twenty-five thousand or twenty-six thousand little boxes a day. I get bored, I get annoyed, I curse. I take a trip to the bathroom.<sup>147</sup>

—Angelita, *maquiladora* worker.

In line with this Fordist labor philosophy the *maquiladoras* have indeed replicated its trio of essential elements—the five dollar day, assembly line production, and the “social department,” the presumed moral authority of the boss to dictate workplace rules of conduct on the line and outside the factory.<sup>148</sup>

Yesterday . . . they put me on a task that I don’t do. They assigned me to put cassettes in the cases. I don’t know how to do that the way it’s supposed to be done. I don’t have any experience. The supervisor put me on it because I refused to switch from day to night shift for a few days. She assigned me the job as a form of punishment.<sup>149</sup>

—Angelita, a *maquiladora* worker.

The price of mass production is not only a bored worker but one whose livelihood depends on being able to keep up with an incredibly fast pace of production. As one writer describes the attitude of the *maquiladora* boss, he is likely to ask himself at the day’s beginning, “how can I get the most out of my workers today, rather than how can

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145. See PEÑA, *supra* note 3, at 4.

146. See *id.* at 33-38.

147. PRIETO, *supra* note 1, at 6.

148. PEÑA, *supra* note 3, at 4-5.

149. PRIETO, *supra* note 1, at 6.

I increase productivity?"<sup>150</sup> There is never any concern expressed for the impact of high production quotas on the workers:

I have to work rapidly despite perspiration and back pain. If I don't work rapidly, I don't meet the quota; then I get nervous and they get on me. There is no feeling more desperate than seeing the pieces accumulate while your companions go on working. On various occasions I've had the urge to cry, scream, to leave everything and run out, to start some other job and to stop doing the same old thing.<sup>151</sup>

—Angela, a *maquiladora* worker.

Meanwhile, business merchants of the new "transnational capitalist class" created by the *maquiladoras* have only praise for this booming industry whose draw to foreign investors is primarily the lowered production costs, i.e., the ability to pay workers in a devalued Mexican currency.<sup>152</sup> An Internet homepage entitled, "Advancing Women," under the Latino Business link, ironically describes the *maquiladora* industry as a "marriage of the best of both worlds."<sup>153</sup> Management firms dedicated to helping American businesses tout the benefits as (1) saving money by performing labor intensive manufacturing and repair operations; (2) enjoying the benefits of NAFTA for exports back into the United States and Canada; and (3) offering an attractive environment for *maquiladora* manufacturing and repair operations.<sup>154</sup>

According to the Mexican National Institute of Statistics ("INEGI") the *maquiladora* industry falls into seven broad categories: textile and garments, electrical and electronic, furniture and wood, services, chemical products, auto parts, and other industries.<sup>155</sup> They employ over 1,000,000 workers in the borderlands alone, a trend which is only moving towards greater and faster development. Critics of the increased expansion argue that the impact of the *maquiladora* system on the workers is a very high price for modernization in Mex-

150. International Confederation of Free Trade Unions, *Behind the wire: Anti-union repression in the export processing zone* (visited Jan. 15, 2000) <<http://www.icftu.org/english/tncs/etnexpzo.html>> [hereinafter ICFTU].

151. PRIETO, *supra* note 1, at 7.

152. *See id.* at xix. The Mexican peso has experienced a series of devaluation and revaluation since the time of Prieto's study. Prieto noted that during the time of her research (1972-1982) the Mexican peso was devalued from 27 to 38 pesos per dollar. *Id.* An inflationary cycle in the early 1990s sent the exchange skyrocketing to thousands of pesos per United States dollar and a need to reevaluate around 1993 and 1997. In today's exchange, 45 pesos would be about five dollars. *Currency*, WALL ST. J., Feb. 14, 2000, at C20.

153. Advancing Women, *Hispanic Women* (visited Feb. 15, 2000) <<http://www.advancingwomen.com/hispbiz.html>>.

154. *See* Advertisements of Mo-Mex Corp. and Cal Pacifico <<http://www.mo-mex.com/index.html>> (visited Sept. 15, 1999) (on file with author).

155. *See infra* Table C.

ico.<sup>156</sup> Indeed, to other critics the term *maquis* is a nickname for sweatshop,<sup>157</sup> the “graveyard of American union labor,”<sup>158</sup> or a labor policy that ties women to the “bonds of patriarchy and capitalist exploitation.”<sup>159</sup>

### B. Oppression on the Basis of Gender

The word “oppression” is a strong word. It repels and attracts. It is dangerous and dangerously fashionable and endangered.<sup>160</sup>

Challenging sexist oppression is a crucial step in the struggle to eliminate all forms of oppression.<sup>161</sup>

The *maquiladora* industry may be the late twentieth century’s hallmark of an exploitive transnational capitalist system of production, trade economics, and employment whose success depends on the use and abuse of a highly feminized workforce which, in contrast to the sophisticated business elite that invests in *maquiladoras*, is poor, young, and uneducated. In other words, it is a system that thrives on gender-based oppression. A typical *maquiladora*’s population of workers is unlikely to benefit in any long lasting way from the experience of working for one of the thousands of bi-national or multinational factories currently supported under NAFTA and prior trade agreements between the United States and Mexico or other Japanese and European corporations. Because of the fragmentation of the production process, the work performed can be done rapidly, efficiently, and by individuals who have no skills prior to employment.<sup>162</sup> The result is a system that offers little transferability of on-the-job skills and the ability to recruit an abundant labor force that, until recent decades, was largely excluded from the Mexican labor economy and that has traditionally been cheaper to employ than men.<sup>163</sup> Moreover, just looking at the wages paid to these workers conjures up an image of violence, in the sense that only outright exploitation and disregard

156. See PEÑA, *supra* note 3, at 10.

157. See Hector Figueroa, *In the Name of Fashion: Exploitation in the Garment Industry*, 29 NACLA REPORT ON THE AMERICAS 34-40 (1997).

158. URREA, *supra* note 132, at 25.

159. Michelle Haberland, Abstract, *Heading South: A Gendered Vision of the U.S. Textile and Garment Industries’ Move to Mexico* (visited Feb. 16, 2000) <<http://www.lanic.utexas.edu/project/labor95/haberland.html>> (criticizing a myopic view of *maquiladoras* women by United States labor as being only victims rather than workers with organizing consciousness whose issues must be addressed through the lenses of patriarchy and capitalism).

160. See MARILYN FRYE, *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY* 1 (1983).

161. HOOKS, *supra* note 124, at 37-38.

162. PRIETO, *supra* note 1, at 27.

163. See *id.*

for the humanity or needs of the wage-worker could explain such economic abuse.<sup>164</sup>

### 1. Wages

I work at Zettler de Mexico (a United States based company that makes computers) 5 days a week, from 2 p.m. to 10 p.m. making 280 pesos (\$37.33) a week.<sup>165</sup>

—Maria

It is not possible to live on what the *maquiladoras* pay and this has made it so many women workers cannot take care of their own children. With such little pay, they are not able to provide the food that their children need.<sup>166</sup>

—Julia Gonzalez

The literature to the potential *maquiladora* investor makes clear that “[r]educed labor cost has always been an incentive for foreign companies to establish *maquiladora* operations in Mexico . . . [and] wages for *maquiladora* laborers are often less than \$1 an hour,”<sup>167</sup> an amount drastically lower than the minimum wages such an employer would have to pay under the United States labor laws.<sup>168</sup> On a recent visit to the border, I spoke with a vendor in Ciudad Acuña, who had once worked as a waiter in Austin, Texas, and he described the impact of the benefit to *maquiladora* owners as “three *maquiladora* workers earning what one person gets as minimum wage in the U.S.”<sup>169</sup> A labor report guiding the future corporate investor notes that while nominal wages in Mexico have risen in recent years, the gains have

164. See PAULO FRÉIRE, *PEDAGOGY OF THE OPPRESSED* 37 (rev. ed. 1998).

165. *Blood Sweat and Tears: Maquiladora Workers Demand a Living Wage* (visited Feb. 16, 2000) <<http://www.igc.apc.org/trac/feature/sweatshops/maria.html>>. “Maria” is a pseudonym for a *maquiladora* worker who is a member of the Regional Border Workers’ Support Committee (Comité de Apoyo Fronterizo Obrero Regional). *Id.* She does not use her real name for fear of retaliation. *Id.* Owners of the *maquiladoras* have a well established track record of firing and blacklisting workers who speak out against the hazardous conditions and low pay they receive. They also respond to those complaints about low wages and the high cost of living by saying that “inflation is not our responsibility.” See Wayne Ellwood, *Mexican Activist Martha Ojeda Works to Promote the Rights of Maquiladora Workers in the Low Wage Assembly Plants Across the Mexican Border*, NEW INTERNATIONALIST PUBLICATIONS, LTD., Mar. 31, 1997 (quoting Maria’s recollection of an encounter with an ALCOA representative).

166. Testimony of Julia Quiñones González, *From Vienna to Beijing: The Copenhagen Hearing on Economic Justice and Women’s Human Rights at the United Nations World Summit on Social Development, Copenhagen, March 1995*, in CENTER FOR WOMEN’S GLOBAL LEADERSHIP 29-34 (March 1995) [hereinafter González Testimony].

167. *Frequently Asked Questions (FAQs) and Answers About Maquiladoras* (visited Sept. 15, 1999) <<http://www.latinobeat.net/MexicoFAQ/html/mexfaqmaq.htm>>.

168. See Fair Labor Standards Act of 1998, 29 U.S.C. § 201 (1998) (setting the current minimum wage at \$5.25 per hour).

169. Interview with a male vendor, “Alberto,” on visit to Ciudad Acuña (Sept. 18, 1999).

been fully absorbed by inflation, and that for the *maquiladora* investor any increases in wages are offset by the devaluation of the peso with respect to foreign currencies.<sup>170</sup>

The impact of the wage system that the *maquiladoras* thrive on is felt by its workers in a livelihood that is filled with the despair of always working hard to get so little in return, the despair of knowing that to complain promises only the potential returns of being fired, or blacklisted for being a troublemaker,<sup>171</sup> or, if not fired, not advancing into any higher position such as team leader. As one plant manager in a Ciudad Juárez *maquiladora* blatantly put it: "The ones that don't make it are the more political ones."<sup>172</sup> In one of the earliest studies on *maquiladora* workers by Mexican think tank researcher Norma Iglesias Prieto, an interviewee named Alma recognized the huge economic surpluses produced by their hard work:

The dresses we make are beautiful, for very fashionable women. They're incredibly expensive! They sell them in the best stores in the United States and they cost \$200 or \$300. And what do we get? We make 45 pesos [about U.S. \$1.00] per dress. Incredible, don't you think? We spend ten hours a day in front of a sewing machine to make a man rich and we don't even know him. And the worst of it is that we continue doing it, some not even making the minimum wage, without complaining, asleep at the wheel, watching time go by, years in front of the sewing machine.<sup>173</sup>

—Alma, a *maquiladora* worker.

The situation appears not to have changed in the nearly fifteen years since Prieto first published her study. Nor has the wage disparity between a United States worker or the gendered wage differential between male and female workers changed much. It is clear that the high employment of women in the Mexican *maquila* that is roughly 56%, significantly higher than their 37% representation in the labor force, and their average wage of four dollars per day are key to NAFTA's success in turning Mexico into a manufacturing "export platform" of export products.<sup>174</sup> While at one time the *maquiladoras*

170. See *Labor in Mexico: A Guide to Mexican Compensation and Labor Law*, TRADE POINT USA (1995) (on file with author).

171. See Dan La Botz, *Coahuila State Legislature to Investigate Maquiladora For Unjust Firings, Black Lists*, MEXICAN LABOR AND NEWS ANALYSIS, vol. III, no. 7 (Apr. 2, 1998) <<http://www.igc.apc.org/unitedelect>> (on file with author).

172. PEÑA, *supra* note 3, at 74.

173. PRIETO, *supra* note 1, at 16.

174. See Dan La Botz, *Women and Children—Labor Base of Mexican, North American Economy*, 4 MLNA (Mar. 2, 1999)

<<http://www.igc.apc.org/unitedelect>>; see also Dan La Botz, *Women in Mexican Society and the Mexican Labor Movement*, 4 MLNA (May 16, 1999) <<http://www.igc.apc.org/unitedelect>> [hereinafter La Botz, *Women in Mexican Society*].



almost exclusively hired women, the increased development has led to the greater employment of men. Women, however, clearly remain in the majority.<sup>175</sup> The job category statistics are also gendered. Women make up a higher percentage of the clothing and electronics industry while men make up the typical worker in the auto parts industry.<sup>176</sup> Throughout Mexico the wage differential on the basis of gender always benefits men, with certain job categories showing an overall wage as high as 20%, 33%, and even 48% higher than women's wages.<sup>177</sup> Not surprisingly, the gender attitudes and stereotypes Prieto discovered that were relied upon to justify the women's low pay (since it is only a "second income") still prevail. In 1981, a *maquiladora* manager in Ciudad Juárez told Prieto that "[W]omen have natural qualities that make them ideal for these positions. Their delicate hands endow them with finesse and precision. Moreover, the female psyche more easily endures the repetitive work."<sup>178</sup>

These words could have been uttered today by managers who continue to use such rhetoric to justify not only the current average of 97¢ per hour, including benefits, paid to the mostly *female maquila* workers in Ciudad Juárez, but also the gendered wage difference between 97¢ and \$1.50 paid to the mostly *male maquila* workers in the automotive assembly industry in Hermosillo.<sup>179</sup> The more than 50% per hour wage difference between the male and female workers is a reflection of the "cheaper" wage for women produced by their doing "what is natural" to their "delicate fingers," a thinly veiled effort to exploit the women's lower degree of political awareness. Because the women are legally hired at the age of sixteen or younger,<sup>180</sup> the combination of youthful naiveté and inexperience makes the exploitation easier. The low pay is commonly defended as reflecting a different purchasing power given the region's lower cost-of-living, a defense that makes no sense economically or ethically. At an international hearing on economic justice and women's human rights, Julia Quiñones González criticized the use of this recurrent myth by *maquiladora* investors to justify the extremely low wages they pay:

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175. La Botz, *Women in Mexican Society*, *supra* note 174.

176. *See id.*

177. *See id.* at Table Wage Discrimination by Job Categories. For example, clerical women earn 20% less than men; domestics 33.4% less; and in supervisory positions there is a 48% gendered wage gap! *Id.*

178. PRIETO, *supra* note 1, at 29 (quoting an electronics *maquiladora* manager in Ciudad Juárez).

179. *See* Gay Young, *Women and Maquila Work: Implications for NAFTA*, in INSTITUTE FOR WOMEN'S POLICY RESEARCH (1992).

180. *See* La Botz, *Women in Mexican Society*, *supra* note 174.

Maquiladora workers only earn about U.S. \$20 dollars a week. . . . I want to rid you all of the idea that if you earn US \$20 in Mexico it is worth a lot. That is not true. When you live in the northern part of Mexico, at the Mexico-US border, the prices of products are much higher. For example, a gallon of milk on the US side of the border costs US \$3. In Mexico, a gallon of milk costs US \$2. This is equal to about 18 Mexico pesos which is more than a *maquiladora* worker makes in a day. A day's pay is 16 pesos and a gallon of milk costs us 18.<sup>181</sup>

"Maria," a worker in Tijuana described the impact of the low wages by detailing the number of hours and minutes it takes to buy basic food items such as vegetables, milk, and meat. Reflecting on the harsh economic impact of Mexico's wildly fluctuating peso value in December 1994, she stated that

Our wages buy about 20% of what they could then. We never could afford much meat, and now we have a hard time affording vegetables and milk, too. We eat a lot more soup made from pasta with a little bit of onion, tomato, and seasoning salt. I can only give the children a little milk at night, because at 48 pesos (\$6.40) for a can (1 lb. 4 oz) of powdered milk, we just can't afford any more.<sup>182</sup>

In 1996, the Tijuana-based *maquiladora* Maxell de Mexico, the cassette tape and computer disk manufacturer whose parent company is in New Jersey, was paying Maria Ibarra thirty-eight pesos per day or 264 pesos per week. Between her oldest son and her, they brought in about 410 pesos per week and still found it hard to buy food. "If we want to eat meat, it can't stretch that far. It's more like we eat bones than we eat meat."<sup>183</sup> Although Maria acknowledged the general wage increases workers are entitled to annually under Mexican labor law, she also noted that before the increases take effect, the prices go up "on everything. . . . Everything. Last January sugar went up a peso. Milk, which cost 15 pesos, went up to \$17.50. I only make 38 pesos a day, so I work half a day for a gallon of milk."<sup>184</sup>

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181. González Testimony, *supra* note 166. I confirmed some of this on a recent trip to Ciudad Acuña. Historically, Americans have been attracted to Mexican border towns because of the profitable exchange rate in the purchase of inexpensive wares, food, entertainment, and restaurants. But vendors also generally raise their prices knowing the tourist's interest in the mass purchase of certain items (e.g., pharmaceutical drugs). The result is only slightly discounted prices in Northern Mexico border towns. I found that a can of soda, for example, varied in price from sixty cents to a dollar, prices that nearly mirrored the cost ranges on the American side.

182. *Blood Sweat and Tears: Maquiladora Workers Demand a Living Wage* (visited Sept. 15, 1999) <<http://www.igc.apc.org/trac/feature/sweatshops/maria.html>>. See also *infra* Table A (detailing the average prices of household necessities in Tijuana, Baja California for an assembly line worker earning 26 pesos a day (\$3.57)).

183. Maria Ibarra & David Bacon, *The Life of a Maquiladora Worker*, PACIFIC NEWS SERV., July 26, 1996, available in LEXIS.

184. *Id.*

## 2. *Terms of Employment*

If it weren't for the way that we all invent ways to increase production, the orders would never be met. One time a co-worker quit, and they forced me to do her work as well as my own. I might have been able to do it, and if not, I would have looked for a way. But I didn't do it because they don't pay me for it. Besides, if I do it once just because I'm a good person, the next time they demand it; they come to expect it of me.<sup>185</sup>

—Gabriela, a former *maquiladora* worker.

Worker oppression in the *maquiladoras* is accomplished not only by indecent wages. The low pay is accompanied by three other key functions: the proliferation of job rankings, production quotas, and the longer "average" working hours. A recent study of the *maquiladoras* in Ciudad Juárez discovered as many as sixteen performance level categories, each having another fifteen to eighteen internal grades that were imposed on the workers. The study noted that such a system kept the "workers . . . so busy competing with each other that they do not have the opportunity to organize collectively against management."<sup>186</sup> Of course, "promotion" is illusory since the hierarchy of categories is primarily designed to bureaucratize the production process and to give management a better means of controlling the workers. At every step of the process there is an evaluation of "how much" a worker is producing. The more and the faster, the better, although "better" never translates into more money.

### a. Job Rankings and Constant Surveillance

One plant manager described the system in his shop as involving:

280 steps that an employee could conceivably move through in going from line operator to a middle-management position. . . . Their pay [at each of dozens of performance grading in the production assembly division] *does not change*, but they gain more positive recognition which can later pay off in a promotion or bonus.<sup>187</sup>

The personal rewards may be small gifts or cash bonuses at the end of the month measured against a worker's consistent productivity by never being late or absent from work.<sup>188</sup> One way of assuring high productivity is to put the workers in teams or groups where all individuals perform the same task. The idea, described by one manager, is to have the workers "motivate one another to keep pace and work

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185. PRIETO, *supra* note 1, at 15-16.

186. PEÑA, *supra* note 3, at 77.

187. *See id.* at 75-76 (emphasis added).

188. *See id.* at 73 (discussing conditional gift giving).

harder.”<sup>189</sup> There was never any mention of extra pay for higher performance levels, only giving them “rewards and incentives.”<sup>190</sup> Also tied to the performance grading is the expectation that a worker should strive for the highest level of attendance or risk the stiff penalties resulting from absences:

The supervisors are quite demanding, and if we arrive late they scold us and dock us. If we are late three times they either suspend us or let us go altogether, whatever they decide. They don't let us talk, and if they see us talking they call us on it immediately. And if they catch us away from our workstations they write us up.<sup>191</sup>

—Angelita, a *maquiladora* worker.

The words of a plant manager in a more recent study confirmed the rigidity of such shop rules when he stated that “failure to show up for work amounts to a forfeiture of their privilege to work for us.”<sup>192</sup> Maria Luisa's story illustrates the arbitrariness of the shop rules regarding absences:

At that time I had to go see my mother in Durango, so I asked for three days' leave. I left Friday night to take advantage of the weekend, to spend more time there. They gave me three days, so I left without any worries. When I returned, they told me I was fired because I had three unexcused absences. I wanted them to let me go, but this was completely arbitrary, because they had given me permission to miss work. What if I had been a single woman with kids, the only breadwinner? For such injustice we would have died of hunger.<sup>193</sup>

—Maria Luisa, a *maquiladora* worker.

#### b. Quotas: Driving the Worker to Produce More, More, and Even Faster

Management in the *maquiladoras* is fully aware of the benefits gained from being able to press the workers into higher and higher production levels, or as one manager put it being able to “double production every six weeks.”<sup>194</sup> It has to do with the absence of unionism. As this same manager put it, “we have a virtual haven for productivity, free of [collective] bargaining fetters. This is so much easier than in the U.S.”<sup>195</sup>

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189. *Id.* at 84.

190. *Id.*

191. PRIETO, *supra* note 1, at 23-24.

192. PEÑA, *supra* note 3, at 75 (quoting a personnel administrator for an apparel plant).

193. PRIETO, *supra* note 1, at 24-25.

194. PEÑA, *supra* note 3, at 80.

195. *Id.*

The quota system of production is the essence of job security for the *maquiladora* worker. The worker who does not demonstrate a consistent pattern of improvement in output risks losing her job because she never advances on the multiple performance grades and she could never dream of rewards or promotions: "What is important to them is meeting the quota. Yesterday a number of *muchachas* had to work from four in the afternoon until two in the morning."<sup>196</sup>

In some factories the "piece work" system assures high levels of productivity. "Alma," who worked in a Tijuana *maquiladora*, described the system's impact:

I had been working for six years in a textile *maquiladora*, where I nearly destroyed my kidneys and my eyes. I never earned a fixed salary. They paid me by the job, on a piecework basis, as they also call it. . . . You get used to it all, or at least we pretend to. At times we let ourselves be carried away by the noise or the music of the radios we all carry. It helps us forget the fatigue and the back pain we all have from working in front of the sewing machine. The moment came when I just couldn't take it any more and I quit, . . . I knew we were in for some hard times, but I never knew just how much. [Because of the currency devaluations] everything is priced out of sight, and I have to hustle to find another job, because every day things just get worse.<sup>197</sup>

—Alma, a *maquiladora* worker.

It is obvious that along with cheaper labor costs another added attraction to the corporate foreign investor is the lack of unionism and the ability to impose higher and higher production levels, thus making the company more competitive in the market economy. As one manager put it, in the "U.S. . . . union negotiations often determine productivity standards. Not here. In Mexico, the firm itself determines the standards."<sup>198</sup>

The production level in actual numbers is dizzying and attests to the dehumanizing function of the assembly line as it breaks down tasks into smaller and smaller components effectively designed to turn the worker into another cog in the wheel of production. According to the recent study by Devon Peña, surveyed workers reported performing an average of 2,569 assemblies per working day (an average of nine hours), an incredible rate of output translating into 333 units per hour or 5.5 every minute.<sup>199</sup> The output is accomplished by not only group

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196. PRIETO, *supra* note 1, at 7.

197. *Id.* at 16.

198. PEÑA, *supra* note 3, at 80 (quoting a former departmental superintendent at an automotive components assembly plant in Ciudad Juárez).

199. *See id.* at 80 (demonstrating the Marxist concept of "condensation of labor").

assignment but also technological means—assembly line speedup that itself can only work where there is constant supervision of the quota system.<sup>200</sup> But, fast work by some workers can generate internal group conflict over productivity and get all workers in trouble with management:

But then there were workers who had a fast pace, finishing with one half hour to spare. They wanted to rest so I can't really blame them. But you have to do it more carefully. In this case, the supervisor saw that these girls could finish faster. So, she personally raised the standard! To 410! She said we all had to do 410 per hour, which is ridiculous. We agreed among ourselves not to meet the standard. . . . The managers got very angry . . . and reassigned us, breaking up the group.<sup>201</sup>

—Veronica Rivera, a *maquiladora* worker.

### c. Average Workdays, Excellence, and Patronizing Responses

The *maquiladoras* thrive on the structure of a work week designed to produce the highest levels of output. While in the United States the average work week is thirty-eight to forty hours, in the *maquiladoras* the average is five to ten hours longer. Saturday work shifts are considered regular and overtime *earns the same rate of pay*. While overtime in the United States usually means a higher rate of pay, the only purpose of working beyond the average nine-hour workday in a *maquiladora* is to catch up on unmet quota standards.<sup>202</sup> In Peña's study, workers averaged forty-six hours per week, 7% reported under forty-five hours, and most reported a range between forty-six to forty-eight hours per week.<sup>203</sup> The work schedules are part and parcel of the need to control productivity, as illustrated by the concomitant rules pertaining to breaks:

Nobody is supposed to eat on the factory floor, but I have to confess that many of us do so because we get hungry before break. It's really unreasonable, because we work from 7:00 A.M. to 5:30 P.M., Monday through Friday. To arrive on time I have to get up at 5:00 A.M., and at that hour you really don't feel like eating. At 9:30 they give us ten minutes for breakfast, and half an hour for lunch at 1:00 P.M.<sup>204</sup>

—Angelita, a *maquiladora* worker.

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200. See *id.* at 81 (suggesting that speed-up is only effective under strict supervision).

201. *Id.* at 117.

202. *Id.* at 78 (comparing compensation for hourly work between United States and Mexican workers).

203. *Id.* at 78-79 (citing a study of the *maquila* work week and overtime).

204. PRIETO, *supra* note 1, at 23.

Furthermore, depending on the shop and the supervisor, a break need not be respected:

[O]ur current supervisor is demanding that we turn in the same level of production during our rest periods as during our regular work periods. You see, at two o'clock we get a ten-minute rest break when we can slow down or stop working altogether. She is trying to take this away from us. We only get ten minutes for breakfast and a half hour for lunch as it is. We are not paid for time off the line.<sup>205</sup>

—Veronica Rivera

Workers who invent new and better methods of increasing production maintain high levels of productivity. They are never rewarded in any significant way, such as a wage increase, to reflect their talents or contributions to the company. Instead, managers typically display sexism and/or racism in their attitudes towards the Mexican worker whose labor is either inventive, reliable, or trustworthy. Plant-wide studies consistently illustrate how *maquiladora* workers confront difficult engineering problems presented by the machinery they work with by redesigning parts and performing their own time and motion studies to improve assembly line flow and production outputs.<sup>206</sup> On one occasion in Ciudad Juárez, *maquiladora* workers modified a machinery part that vibrated too fast and interfered with production demands. The problem had eluded both the engineers and the mechanics responsible for the machine's efficient operation.<sup>207</sup> The workers confronted their supervisor and demanded a wage increase that even the production engineer felt had been earned. But the plant manager responded in a patronizing manner: "[T]hanks for being good workers. It will go on your record as an excellent accomplishment. That is your reward."<sup>208</sup> The women workers reflected on the source of attitudes: "I think they treat us this way because most of us are women. They figure they can get away with it because we don't always protest. And they know how difficult it is for us to change the way things are organized."<sup>209</sup> Some plant managers would probably deny that their ways of "appreciating" the hard labor and talents of a Mexican worker who overcomes mechanical difficulties to meet the company's production demands are *profoundly racist*:

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205. PEÑA, *supra* note 3, at 115-16.

206. See PRIETO, *supra* note 1, at 15.

207. See PEÑA, *supra* note 3, at 192-93 (describing how unskilled workers found a solution to vibration of bobbins at high speeds).

208. *Id.* (quoting an October 1982 interview of Emilia Zamora).

209. *Id.* at 193 n.3.

That's one thing I like about Mexicans, they have pride; they don't want to be considered second-rate or third-rate. They want to be first so they put out for us. . . . Throughout this industry, wire stripping gives us a lot of problems. We use twenty, thirty miles of wire a day. The wire-stripping machines have a lot of downtime. I come to Mexico and some old, dumb Mexican, and I mean that affectionately, no one has told him that his machine is supposed to break down. I have this one Mexican boy. . . . He works in another building by himself on this machine that in the U.S. is always breaking down, it always has quality-control problems. There he is with his stereo headphones on listening to I guess Mexican disco or whatever. He's so ignorant, he thinks he's supposed to run the machine all day long. You'd never find someone like that in the States.<sup>210</sup>

—Unnamed Ciudad Juárez plant manager.

Racist and cultural stereotypes strip the Mexican laborer of his or her identity and humanity and also facilitate their exploitation throughout the industry. The abundance of needy people looking for work at the border makes it easy for companies to absorb any turnover from frustrated and exhausted workers quitting their job.<sup>211</sup> Allegedly, Mexico's employment crisis in the nineties has produced anywhere between eighty and ninety vacancies for a single working-class job.<sup>212</sup> Thus industry-wide practices designed to manipulate the workers' fears of losing their jobs becomes another aspect of the systemic abuse designed to maximize production and profits. One example is the use of threatened layoffs or contrived layoffs, together with intentional exploitation of the same skills. Management refuses to reward workers. "I don't want him to get civilized. You hit them with pride. Mexicans are very prideful people. You may drop a subtle hint. You may hint that they are doing an inferior job. They'll get mad as hell and do a better job."<sup>213</sup>

There were times when we were a little short on mechanics. . . . [W]e had observed that many of the line operators could repair their own tools. What's more, they had contributed some important modifications in our conveyor-belt systems. They were capable and we knew it. So we told the operators that the plant was going to close down temporarily for lack of personnel and that we did not have anyone to repair the machinery or maintain the tools. Immediately, just as we expected, the best operators came forward and volunteered to do the work until we could find the appropriate per-

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210. *See id.* at 88.

211. *See id.* at 89 (demonstrating that the labor market allows companies to maintain high quotas while experiencing high turnover).

212. *See ICFTU, supra* note 150.

213. *Id.*



sonnel. . . . And you know what, they did as good a job as the skilled mechanics. *Even better because we paid them less.*<sup>214</sup>

—Rogelio Modruga, a former production superintendent at an assembly plant.

### 3. *Gender at Work: The Benefits and Burdens of Being a Female Maquiladora Worker*

The *maquiladora* industry is profoundly sexist. Women who eventually quit or were fired understood this well as they looked back on their experiences with both nostalgia and bitterness. Sometimes they understood it from the perspective of failed efforts to challenge management, like Alma, who remembered quitting because she was “fed up and exhausted.”<sup>215</sup> Alma felt that “No woman in the *maquiladora* stands up for her rights, neither here nor on the other side of the border. That’s why the owners prefer to hire women.”<sup>216</sup> Other times a female worker’s gender awareness stemmed from a reflection on the way she was socialized to be a woman in her culture, a perspective that can produce as many truisms as stereotyped views about Latina women’s traits and abilities. For example, Amelia felt that:

women are less problematic than men. We’re more responsible. It’s a real hardship if we lose our jobs. By contrast, men don’t worry about it. If a man wakes up with a hangover some morning, just like that he blows off his job. We women tend not to have so many bad habits, and those women who do are less likely to blow it off.<sup>217</sup>

—Amelia, a *maquiladora* worker.

Alma expressed similar internalized gender attitudes as Amelia, but as a “retired” *maquiladora* worker she viewed them through the lenses of age and experience:

[T]hey hire women because men created more problems for them. We women are more easily managed. The bosses just have to express their concerns about production and we women, fools that we are, work even harder to protect their profits while we ourselves are dying of hunger. . . . [A] male worker wouldn’t stand for it—he’s more aggressive. Men organize themselves, and if they don’t get what they want, they walk off the job, . . . *That’s why they pull in any young girl to work.* They train them and pay them the minimum

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214. PEÑA, *supra* note 3, at 198 (emphasis added).

215. PRIETO, *supra* note 1, at 16.

216. *Id.*

217. *Id.* at 31.

wage if they can. The owners well understand this; they don't hire men because the *maquildoras* would not be as productive.<sup>218</sup>

—Angela, a *maquiladora* worker.

a. Mexican Patriarchy, American Racism and Labor Division in the Maquiladoras

The Mexican culture is well known for its idealized visions of the masculine and feminine gender roles. "Machismo," or "male chauvinism," has traditionally called for men to be sexually assertive, independent and emotionally restrained, the wage-earner, and the ultimate patriarchal authority over wife, children, and servants, if any, in the household. I remember learning from a young age that, embedded in the affectionate reference to a man as *mi rey* (my king), was a message of respect for male authority not to be questioned by the women in the home. The gender role for women, in contrast, has been described as *Marianismo*, a role modeling based upon the legendary image of the *La Virgen María*, the mother of Jesus Christ. Given the prominence of Catholicism in Mexico, *Marianismo* has influenced generations of women to be dependent on their fathers, husbands, or elder male relatives. The women are responsible for the domestic chores and completely selfless and devoted to her family and children.<sup>219</sup>

Given these traditional values, Mexican women have had little access to the experience of earning wages. Of course, similar to the history of women's labor in this country, that statement mostly pertains to the experiences of middle-class women. Like the United States, Mexico has its own longer history of peasant women working alongside their husbands in the fields, or of working-class *mestizas* earning a pittance of wages in the industrializing textile and tobacco factories in the nineteenth century.<sup>220</sup> There is also a long history and tradition of poor peasant families sending their young daughters to work as "help" or domestics in the homes of the wealthier classes, sometimes only for room and board and sometimes for small wages.<sup>221</sup>

In the context of *maquiladora* work, the traditional gender roles that dictate domesticity and submissiveness in a woman are replicated

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218. *Id.*

219. See generally THE SEXUALITY OF LATINAS (Norma Alarcón et al. eds., 1993) (presenting a collection of essays, stories, and poems); HONDAGNEU-SOTELO, *supra* note 20, at 9-10 (describing Mexican patriarchal traditions).

220. See PEÑA, *supra* note 3, at 16 (citing Mexican women's work and struggle against factory bosses since the first Mexican industrial strikes of 1861).

221. See Elvia R. Arriola, Women During the Mexican Revolution (1988) (unpublished manuscript on file with author).

and shaped by race and class attitudes about the poor Mexicana in the gender relations between women workers and male plant managers: "You know, we are doing real good for Mexico. My girls, well, they have no skills at all coming into these factories. What they have is a respect for authority and an ability to work long and hard at the same thing, over and over again."<sup>222</sup>

Plant managers who truly believe they are doing "good for Mexico" would apparently deny the charge of female exploitation since the *Mexicana* worker has been socially constructed into someone who is ignorant, has no skills, and can barely take orders without complaining. The belief system produces further sexualized racist attitudes about her, a young Mexican woman who, if not "saved" by *maquiladora* work, would choose more debasing work:

I mean, these girls don't have a lot of other options: stay at home, sell trinkets or candies on the street, work at a sewing factory, or, worst of all, prostitution. . . . The way I figure, these plants are good for Mexico because they. . . offer the young women a chance to be something better. At Electro-Fixtures we have a slogan: "Working hard for EF is working hard for self-improvement."<sup>223</sup>

—Unnamed Ciudad Juárez plant manager.

Choices about whom to employ and how to treat them are infused with gendered attitudes in the *maquiladoras*. Gender ideology is premised upon the division between male and female bodies and a culture's perceived differences in women's and men's talents and abilities based on these physical aspects.<sup>224</sup> Researchers of the industry who have interrogated the workers and their employers note how young women are preferred for tasks that are delicate and monotonous, work assignments that draw directly upon the blatant stereotypes of a woman's physical form and her natural talents or her perceived demeanor—as docile, submissive, patient, and reserved.<sup>225</sup> An image of the ideal *maquiladora* worker is created by a confluence of the historical fact of her dependency, cultural gender roles, and the sexually racist beliefs that these women are best suited for repetitive, tedious, and mindless work, while men should do the work requiring action, reason, endurance, and leadership. Gender attitudes further influence the manager's view of whether or not women can be promoted into positions of authority:

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222. PEÑA, *supra* note 3, at 13.

223. *Id.* at 14.

224. See generally Scott, *supra* note 19.

225. See PEÑA, *supra* note 3, at 1-18.

It's just too much trouble. I can move women up a notch or two—you know, from operator to group chief and maybe even quality-control inspection. But, if I was to promote women into higher supervisory levels, well, the men, the Mexican males, would be terribly upset. I'm not against the idea of women doing that type of work, but my first duty is to maintain order in the plant. The attitude of the men here, let me just say that it does not give me a lot of room to move in.<sup>226</sup>

—Unnamed Ciudad Juárez plant manager.

In fact, the few women who are promoted into typically male jobs, like mechanics,<sup>227</sup> describe the work as not only better paid but “anything but boring.” But the rarity of a woman doing such a job, noted Gabriela, who was promoted into the job of mechanic, also earns her the “envy of a lot of people.”<sup>228</sup>

Managers usually reveal their ambivalent attitudes, fed by gendered notions of difference in abilities and sexist notions of male superiority, as they observe at once how a woman *can* be a good supervisor, and yet, how the work is simply *not* suited for her:

The females are much less tolerant of mistakes, poor quality, whatever. They are fantastic leaders of males. The difficult thing is making the females believe they are managers. If they want a job like a man they have to work like a man.<sup>229</sup>

—Unnamed Ciudad Juárez plant manager

#### b. *Sexism, Racism, and Ageism in the Maquiladoras*

The driven pace of work in the *maquiladoras* could not be accomplished without the paternalism and/or *machismo* of the plant managers who must constantly seek ways, while upholding harsh production quotas and machinery speed to maintain the loyalty of his workers. The plant manager who previously stated that “you must hit them with pride,”<sup>230</sup> alluded to an essential aspect of the success of the *maquiladoras* in socially controlling its workers with a range of strategies aimed at eliciting that sense of employee pride and joy. Throughout the industry, management uses informal sources of regulation such as

226. *Id.* at 72 (quoting a September 1982 interview at Ciudad Juárez).

227. See MLNA, *Women Workers*, vol. IV, no. 9, *supra* note 174. In 1960 the percentage of men in the *maquiladoras* was 10%; by 1990 it had risen to 30%; in 1999 it was 44%. Despite the increasing presence of men in the *maquiladoras*, the patterns of employment remain gendered. Men tend to make up a growing percent of the auto parts industry while women are largely in the clothing and electronics industries.

228. PRIETO, *supra* note 1, at 12-14.

229. PEÑA, *supra* note 3, at 73 (quoting a July 1983 interview at Ciudad Juárez).

230. See *supra* Part III.

rewarding workers.<sup>231</sup> For example, the *maquiladoras* have long been known to put on "beauty pageants" for the title of "La Flor Más Bella de la Maquiladora,"<sup>232</sup> or "Miss Maquiladora,"<sup>233</sup> or "decorate the [assembly] line contests."<sup>234</sup> These strategies obviously supplement the task of managers and supervisors controlling the workers by walking around checking production quotas, changing machinery speed, and reprimanding anyone who is chatting or doing anything to slow down the production schedule.

The workplace dynamic of the *maquiladora* conjures up an image of the *paternal master/dumb servant*. Given the owner's power to expect so much for so little in return, it is hardly surprising to see the array of inconsistent attitudes, some quite racist, expressed by plant managers about the Mexican worker. Either she or he is filled with pride, hopelessly "without skills,"<sup>235</sup> "too dumb or ignorant to know better," or someone whom, if not watched, will "sit in a corner and let someone else do the work."<sup>236</sup> Whatever they are, too much or too little, they are not to be allowed to think too much on the job, although obviously some do just that. Those who have learned to struggle against the speedup<sup>237</sup> or who have asked for a raise in protest against an arbitrary production quota,<sup>238</sup> or who ask for a raise to compensate for a creative solution,<sup>239</sup> must come to know and understand well that the little contests, bonuses, and rewards are just meant to keep them competing with each other and to prevent them from unionizing.<sup>240</sup>

The fact that *maquiladora* workers are typically female and very young, some even children of ages eleven to fourteen,<sup>241</sup> is an asset to the manager's efforts at controlling them. Ana Rosa Rodríguez, who was thirty-seven when she applied to work at a Panasonic factory, was told that the company had a policy of not hiring women who were

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231. See *supra* Part III.B.

232. PRIETO, *supra* note 1, at 74-80 (illustrating activities sponsored by the *maquiladoras* to distract workers).

233. PEÑA, *supra* note 3, at 93 (demonstrating efforts to retain the loyalty of workers).

234. *Id.*

235. *Id.* at 88.

236. *Id.* at 74 (quoting a plant manager's February 1982 interview at Ciudad Juárez).

237. *Id.* at 112-21 (citing examples of work slowdowns or output restrictions as a means of battling increased productivity requirements).

238. See *supra* Part III.B, V.

239. See *supra* Part III.B.

240. See Susanna Peters, *Labor Law for the Maquiladoras: Choosing Between Workers' Rights and Foreign Investment*, 11 COMP. LAB. L.J. 226, 244-45 (1990).

241. See Don Sherman, *Congeladora Del Rio Workers Fight for Union Recognition*, 4 MLNA (July 1999) <<http://www.igc.apc.org/unitedelect/alert.html>> (illustrating that children as young as eleven are required to work 14 to 15 hours per day).

over thirty.<sup>242</sup> The young ones can be distracted from their harsh working conditions by having them look forward to rewards for their hard labor with company-paid fiestas or trips to resort towns, small prizes of pens or blazers with the company's logo, or a free vacation every few months to the shop's best workers.<sup>243</sup> It is an effective system for avoiding the request for more pay or for a promotion.<sup>244</sup> Not surprisingly, the tactics often include psychological ploys that encourage a young female worker to utilize her sexuality:

The supervisor takes to flirting with me, saying, "You're the best worker, and that's why you're my favorite." Soon all the women are jealous because he treats me better than them, and they all stop talking to me. After several days he says the same thing to another, and all the women get jealous again. We are always competing to be the best and become the favorite.<sup>245</sup>

—Marta, a *maquiladora* worker.

Managers also encourage young women to take classes about the work they are doing, or to attend "personal hygiene classes" offered by government social service agencies.<sup>246</sup> Some of the workers in fact attended school in addition to working in a *maquiladora* and described the company managers' paternalistic attitudes:

All of us who work in these factories are quite young, and the supervisors worry about us as if they were our parents. They're always hurrying us up so we don't get to class late, because the majority of us who work there also go to school."<sup>247</sup>

—Marta, a *maquiladora* worker

The combination of fiestas, free food, small gifts, bonuses, vacations, and training creates the image of the company truly caring for its workers, even as it manifests the patronizing racist attitude that the benevolent *maquiladora* owner is "doing good for Mexico." Against the backdrop of the exceedingly low wages, the unsafe or unhealthy working conditions, and the constant harassing by supervisors to work faster to produce more, the conduct evokes the historic analogue of the nineteenth century plantation owners who sought to maintain their slaves' loyalty with big holiday parties and special foods or clothing. This gives the illusion of the Master's kindness and sincere grati-

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242. See "A Job or Your Rights" *Continued Sex Discrimination in Mexico's Maquiladora Sector*, HUMAN RIGHTS WATCH, Dec. 1998, at 17 [hereinafter HRW Study].

243. See PRIETO, *supra* note 1, at 74-80 (citing various activities organized by the employers for the workers).

244. See PEÑA, *supra* note 3, at 73-74 (providing a cost-effective method that elicits loyalty among workers).

245. PRIETO, *supra* note 1, at 76.

246. See *id.* at 74-75 (encouraging attendance at school or training courses).

247. PRIETO, *supra* note 1, at 75.

tude for their free labor.<sup>248</sup> Photographs I recently took of the *maquiladoras* of Ciudad Acuña, Coahuila confirm my impression of the companies' grounds, with their ten-foot high chain-linked fences, picnic areas and basketball courts, akin to the institutional settings of a prison or a reform school where discipline is maintained with strict rules and reward systems for obtaining social control.

4. *Female Sexuality and Women's Bodies in the Maquiladoras: Sexual Harassment and Pregnancy Testing as Forms of Social Control*

Every day the girls go to work more and more decked out, and no sooner do we complain about something we don't like than the bosses tell us, "Arguing is not ladylike; if you get angry it makes you unattractive, and then we won't be fond of you."<sup>249</sup>

—Marta, a *maquiladora* worker.

As previously noted, the younger women are encouraged to utilize their sexuality in the *maquiladoras* at the same time that their right of reproductive choice is actively repressed. This is manifested in the sexist attitudes of managers who equate job security with being pretty, ladylike, and the sexual object of attention, exploitation, and abuse. The repression is in the industry's systematic use of pregnancy testing so as not to hire young females or to be able to terminate them in order to maintain high production demands.

a. Sexual Harassment

Referring to the role of the beauty pageants, a former "Miss Maquiladora" noted that:

[T]he whole thing about the pageants that troubles me the most is that the men, who usually do the judging, do think of us as bodies, sex objects. And the audience is awful, jeering and cheering like crazy. Even worse than all this is that the plant managers think they own the workers, our beauty is theirs for the claiming. They take credit and then expect you to be the ideal, pretty worker. But beauty is not much help back inside the factory, unless you are willing to accept the sexual advances to protect your own job security.<sup>250</sup>

—A former *maquila* beauty-pageant winner.

By asking the young women to utilize their sexuality, the system elicits in their behavior the essence of stereotyped attitudes about

248. See EUGENE D. GENOVESE, *ROLL JORDAN ROLL: THE WORLD THE SLAVES MADE* 566-84 (1974).

249. PRIETO, *supra* note 1, at 76.

250. PEÑA, *supra* note 3, at 93-94.

women—coy, cunning, and manipulative of men with their sexual and feminine charms:

All these girls are so young, single minors whom he has brain-washed. That boss we had was a very coarse person, quick to paw you with his hands. . . . He was the worst kind of person! It's an everyday thing for the bosses to invite a girl to dinner and proceed from there, and the stupid girls acquiesce to see what they can get out of it: to keep their preferred shift, to keep from being fired, or to be promoted to a supervisory position.<sup>251</sup>

—Angela, a *maquiladora* worker.

The demands placed on the female *maquiladora* worker's body through sexual harassment serves as an added means of informal control of the workers. Women are approached by supervisors who ask them out to dinner and who may put pressure on them for sexual favors in return for a raise or more vacation time.

[T]he manager had his pets. In the beginning there was just one, then there were more. We all knew it because we all saw it happening. His pet was an operator, then after a while she became a supervisor. This happens a lot in the factories, but it depends on the woman.<sup>252</sup>

—Marta, a *maquiladora* worker.

One woman eventually quit from the pressure she felt from being sexually harassed by a supervisor and then being ignored in her complaints about the conduct by the personnel manager:

I told him that I already had a friend and that I wasn't interested in a relationship with him. . . . He kept insisting and he became much more aggressive about it. . . . He started fondling me, at first making it look like it was an accident, you know, brushing his hand across my breasts. Then he started grabbing me from behind. . . . one time I almost cut my fingers on the belt, he startled me so. Finally, one night as I was leaving the plant . . . he grabbed me in the parking lot and kissed me. He said something like, "If you don't give it to me I'll make sure you never work in Juárez again."<sup>253</sup>

—Chela Delgado, former group chief at an electronics assembly plant.

#### b. Pregnancy Discrimination

Female sexuality is also repressed by *maquiladora* owners. Because maintaining production levels is a key feature of the industry, the pregnant worker is seen as a threat to the business. Thus pregnancy-

251. PRIETO, *supra* note 1, at 76-77.

252. *Id.*

253. PEÑA, *supra* note 3, at 120.



based sex discrimination throughout the industry is a virtual norm. Being able to keep one's job while pregnant is wholly dependent on being seen as a "good worker." A former line supervisor for a *maquiladora* in Tijuana explained the process:

Pregnancy tests were given to all women workers. There was an infirmary which gave the pregnancy tests. [The company] always gave pregnancy tests because they wanted to make sure workers would work for at least a year. . . . Workers who became pregnant would have their probationary contracts "cut" after the first one or two months. The company would use the pretext that the workers were "bad elements," or say they had bad work records. The truth is that companies discriminate against pregnant workers because of the potential or expected loss of production, not because of the cost of maternity leave, as some companies argue.<sup>254</sup>

These explicit policies are ironic given the prominent role women have played as the industry's ideal worker because of stereotyped attitudes about their natural ability for monotonous, delicate, and reliable work. But as workers who are also typically young and barely starting out in life, one would expect them to reach stages where they are thinking of serious relationships, marriage, and motherhood. Thus, singling out women for the very aspect of their identity that makes them *women*, such as the ability to become pregnant, is an obvious form of sex discrimination in the industry. It is also a blatant exploitation of the youthful female body for its sheer utility in the non-pregnant state. Neither the companies nor the Mexican government has adequately addressed the pervasiveness of pregnancy screening that appears to be motivated by the desire to prevent the disruption of production schedules and/or to avoid paying for mandatory maternity leave costs.<sup>255</sup> The reluctance has generated the claim that the practice constitutes a blatant form of human rights abuse.

In 1996, Human Rights Watch documented rampant use of pregnancy testing by *maquiladoras* in five Mexican border cities.<sup>256</sup> A follow-up study the next year showed that pregnancy testing was still rampant in three of the cities and that companies in another city, Ciudad Juárez, not covered in the first report, also routinely tested its

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254. HRW Study, *supra* note 242, at 11.

255. *See id.* at 11 (citing that under Mexican law a woman must have accrued a certain number of days in the social security system before she can qualify either for full payment of maternity costs from the government or partial payment by the employer). The guarantee is six weeks of paid maternity leave pre-partum and six weeks paid post-partum. *Id.* *See also* PATRICIA BEGNÉ, *LA MUJER EN MÉXICO, SU SITUACIÓN LEGAL* 76 (1990).

256. *See No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector*, HUMAN RIGHTS WATCH, Aug. 1996, at 16-22 (citing interviews of workers from Tijuana, Baja California; Chihuahua, Chihuahua state; Reynosa, Rio Bravo; and Matamoros, Tamaulipas state).

workers for signs of pre-employment pregnancy.<sup>257</sup> When interviewed, corporate representatives acknowledged and defended the use of pregnancy screening as a legitimate employment practice to protect their financial interests. From a policy perspective it is amazing that American employers, once they don the identity of the “transnational corporate producer,” can so easily and brazenly practice what in this country is prohibited by the Pregnancy Discrimination Act of 1978.<sup>258</sup> But transnational corporate investors justify the various methods used to screen for pre-employment pregnancy by stating that to end it would mean “expos[ing] itself to substantial financial liabilities in the social security system for maternity benefits.”<sup>259</sup>

Another typical corporate response to the charge against pregnancy screening is that it is a way of ensuring that women will be able to meet the high-pressure production goals. This goal has been absolutely confirmed by the women workers themselves:

Pregnant women are not contracted because they will ask for time off from work, either for visits to the doctor [for prenatal care] or for maternity leave. It is all about meeting production. In this factory, they calculate how many workers and how many hours it will take to complete a certain job. Each line worker has a certain amount that she must produce. Pregnant women cannot work when the quota is too high. There is no room for people to miss work, or not work to their fullest capacity.<sup>260</sup>

—Julia Muñoz

Another rationale offered by the corporations has surfaced since the publication of the Human Rights Watch report. The “protection of the worker” defense resembles the “fetal protection policy” a major United States employer once used to justify its sex discriminatory policy against females. This defense failed the test of being a “bona fide occupational qualification” according to the Supreme Court in *UAW v. Johnson Controls*.<sup>261</sup> Some *maquiladoras* now argue that they are just trying to comply with Mexican law mandating special protections

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257. See HRW Study, *supra* note 242, at 15 (describing the follow up study conducted from May through November 1997).

258. See 42 U.S.C. § 2000 e(k) (amending Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000-e *et seq.* and defining sex-based discrimination in employment as including unfair treatment because of pregnancy).

259. HRW Study, *supra* note 242, at 11 n.5 (quoting Zenith Corporation’s policy on pregnancy screening).

260. *Id.* at 52.

261. See *International Union v. Johnson Controls*, 499 U.S. 187, 206 (1991) (ruling against employer’s effort to characterize fetal protection policy as a “bona fide occupational qualification”).

for pregnant workers and their fetuses.<sup>262</sup> But the reports of former supervisors who supposedly enforced health standards contradict this justification, stating that enforcement of health and safety is completely arbitrary and that employers only "want to appear to be complying with the law. . . . The company made no special provisions for pregnant women."<sup>263</sup>

Literally dozens of women interviewed by Human Rights Watch, doing work such as assembling televisions, computers, batteries, car seats, cellular phones, picture frames, clothing, thermostats, air conditioners, or decorative shopping and gift bags for American companies with familiar names like General Electric, Zenith, Honeywell, Hallmark Cards, Panasonic, Mattel, Hyundai, Chrysler, Ford, and General Motors reported that pregnancy testing is standard in pre-employment screening.<sup>264</sup> The routine nature of pregnancy screening throughout the industry has an impact at the point of hire and during a worker's employment. The tests are performed at many companies by on-site doctors and nurses who administer legal pre-employment medical exams or by personnel officers who ask questions: (1) "Are you pregnant?"; (2) "Are you sexually active?"; or (3) "When was your last period?"

For example, Rafaela Rojas Cruz, age twenty-three, was approached during her three-month probationary contract by her supervisor and asked if she was pregnant because she appeared to become nauseous everyday. When the pregnancy was confirmed she was told her contract would not be renewed. She approached the unions for help in getting another job and was told that their policy was not to send out applicants who were pregnant.<sup>265</sup>

Although Marcela Gallego informed personnel officers that she was sterilized, she was still given a urine test and then deceptively informed that because female employees would be working with electricity they had to be pregnant-free.<sup>266</sup> Manuela Barca Zapata was given a pregnancy test that was administered in the humiliating manner of a nurse keeping the door open and standing by watching her

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262. See HRW Study, *supra* note 242, at 52 (citing interview with former line supervisor concerning the corporation's approach to safety).

263. *Id.*

264. See *Maquilas: A Preview of NAFTA* (visited Jan. 20, 2000) <<http://www.web.net/~msn/5maq2.html>> [hereinafter *Preview of NAFTA*].

265. See HRW Study, *supra* note 242, at 16-17 (citing Nov. 8, 1997 interview at Matamoros).

266. See *id.* at 17 (describing that another worker was told that women over 30 were not hired by the factory, nor are men over 35 considered for employment).

urinate into a cup so as to keep her from cheating. She was also asked when she had her last period and her use of birth control.<sup>267</sup>

Post-employment pregnancy testing is also systematic throughout the industry. Some of the methods are humiliating and disrespectful of an employee's right to privacy. At one company, female employees were not only asked to take urine samples but even had to show used sanitary napkins to company medical personnel to prove that they were still menstruating.<sup>268</sup> Women from other companies who reported the practice of mandatory menstruation checks said it was "demeaning and embarrassing," but they did not feel they could say no to the request.<sup>269</sup> Adriana Salas, who worked at *Tagit de Mexico*, felt that a woman who got pregnant while being employed was likely to stay if she had been there for a while. But others, who might get pregnant during the first few days, or weeks, risked losing their job.<sup>270</sup>

Even the worker who is able to stay and who may become pregnant is not free from the discrimination. Xochitl Alanis, twenty-nine, who assembled car parts in Reynosa, reported that she became pregnant after working several years for the General Motors factory. When she became pregnant, the supervisor regularly complained about her leaving her work station and about missing too much work for seeking prenatal care. She was also frequently chastised for taking too long, during her lawfully mandated breaks,<sup>271</sup> to pump milk from her lactating breasts for nursing purposes.<sup>272</sup>

Not unlike the factory mills of the nineteenth century in the United States, the transnational corporation has exported some of the uglier aspects of this nation's labor history, symbolized by landmark cases like *Muller v. Oregon*,<sup>273</sup> which validated a state's right to enact protective legislation on grounds that the working conditions were espe-

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267. See *id.* at 18-19 (citing an April 1991 interview at Bell Eléctricos, Ciudad Juárez).

268. *Id.* at 11, 22 (citing an interview with Adriana Salas in Tagit de Mexico).

269. See HRW Study, *supra* note 242, at 33 (describing that women felt obligated to comply with menstruation checks to keep their jobs).

270. See *id.* at 27 (citing a May 1997 interview).

271. See *id.* at 32-33 (citing Article 170 (IV) of the Federal Labor Code that guarantees once a working woman is registered as a qualified public employee with the Instituto de Seguridad y Servicios Sociales para los Trabajadores del Estado (ISSSTE), or as a private employee with IMSTE, Instituto Mexicano de Seguro Social, a Mexican woman is entitled to a range of pregnancy and child-rearing benefits). A qualified woman may receive obstetric services, 42 days of time off before birth and 42 days off after childbirth, fully paid. She is also entitled to six months or longer of breast-feeding assistance ("ayuda para lactancia"). See BEGNÉ, *supra* note 255, at 76.

272. See HRW Study, *supra* note 242, at 32-33 (citing an interview with Xochitl Alanis).

273. 208 U.S. 412, 421-22 (1908) (upholding state law regulating a ten hour maximum workday for women employed in laundries). Obviously, early efforts to impose reasonable workday schedules benefited from the gendered stereotypes of the day. These early labor laws known as "protectionist legislation" were eventually challenged in the mid-twentieth century women's

cially dangerous for women. And yet, the explicit and implicit racist sexism in *maquiladora* management may not be the worst of the long-term impact on working women's lives. Other issues center on the environmental and occupational hazards of the workplace and a mixed record of bi-national policing of hygiene and safety standards. If the environmental problems raised by the industry are viewed through the lenses of gender, one may conclude that the *maquiladoras* are not only exploiting women but they are exploiting the earth's resources with an environmental sexism that has harmed Mexican working women's lives and has endangered their families, their communities, and all the people who live on both sides of that 2,000 mile region we know as the U.S.-Mexico border.<sup>274</sup>

#### IV. THE WORKING ENVIRONMENT OF A *MAQUILADORA*: HEALTH AND SAFETY RISKS AS A TERM OR CONDITION OF EMPLOYMENT

I was on that job for a year and seven months, then they moved me into the chemical room. In that department I had to make chemical mixtures, and it was quite dangerous because we did not have all the necessary laboratory safety and ventilation equipment. I worked with a variety of acids: nitric, sulfuric, hydrofluoric, acetic. We also worked with trichloroethylene, acetone, nickel, freon, and other substances. I breathed those acid vapors for many hours on end, often ventilation was poor and I would get sick to my stomach. One time they had to put me on worker's compensation for four months because my body was completely saturated with the chemicals.<sup>275</sup>

—Gabriella, a former *maquiladora* worker.

"We earn our work by the sweat of our brow."<sup>276</sup>

—Maria Luisa, a *maquiladora* worker.

There is nothing wrong with hard work. But there is something profoundly wrong with a public policy that allows the international division of labor between United States and Mexican workers to produce working conditions, such as breathing in acid fumes, working in dangerous settings without adequate protective gear, working and living in a polluted environment, and being pressed inhumanely on long work days to perform faster in order to meet arbitrarily set production quotas. In the 1980s, environmentalists began to examine the extent to which occupational hazards in the *maquiladoras* were just a part of

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rights movement. Ten years after *Muller*, the Supreme Court upheld maximum work hours for men in manufacturing plants in *Bunting v. Oregon*. 243 U.S. 426, 438-39 (1917).

274. See *Preview of NAFTA*, *supra* note 264.

275. PRIETO, *supra* note 1, at 10-11.

276. *Id.* at 25.

the environmental degradation developing along the U.S.-Mexico border.<sup>277</sup>

During the eighties, the Mexican *maquiladora* emerged as the attractive replacement for U.S.-based factory assembly in the electronics, furniture, and chemical industries, a development that has allegedly increased the hazards, not only for workers, but also for environmental pollution throughout the region.<sup>278</sup> Once a haven for the garment/apparels industry, the border was now booming in *maquiladoras* in the electronics industry, a sector that uses large volumes of industrial solvents in the production process.<sup>279</sup> Gabriela, who worked in an electronics assembly plant and whose body became “saturated with the chemicals,”<sup>280</sup> said that her “stomach burned a great deal and [she] had constant headaches”<sup>281</sup> from working in unventilated rooms mixing dangerous substances without proper laboratory equipment.

#### A. The Hazards for Employees

Researchers have discovered that chemical production engages the highest level of risk for industrial accidents as compared to furniture making, metal fabrication, or non-electrical assembly.<sup>282</sup> The most common risk factors generally include contact with actual instruments of production, physical plant conditions, and psychosocial conditions. Gabriela described two of these risk factors on one of her old jobs in a Tijuana *maquiladora*. She noted further the injustice of the workers never getting premium pay for doing such risky work:

That work with acids is very exacting and dangerous, because if you don't mix the chemicals properly they can explode. Everything has to be done by the book, using precise measures. Despite the hazardous nature of the work, and the fact that you must be specially trained to do it, they pay the same as for any other job, and they fail to recognize its critical importance. . . . One time there was an explosion and two co-workers were burned. Fortunately, their clothing was stripped off right away and they were washed down, which kept them from being badly burned. If the chemicals had gotten on them, even one drop in the eyes, they would have been blinded.

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277. See Williams, *supra* note 116, at 272 (finding that although environmental groups' political power may be declining in the mid-1990s, environmentalists and social action groups are at an all time high of 200, located in the bi-national Borderlands, since their start in the 1980s).

278. See *id.* at 266.

279. See *id.*

280. PRIETO, *supra* note 1, at 11.

281. *Id.*

282. See PEÑA, *supra* note 3, at 296-97 (finding that some *maquila* sectors have markedly higher rates of exposure to health and safety risks).

One of the safety measures that we did have was goggles, but we rarely used them because they made us so hot, as the room has no ventilation.<sup>283</sup>

—Gabriela, a former *maquiladora* worker.

Another major complaint of workers is the lack of adequate warnings for workers who might be exposed to toxic chemicals and substances. Julia González complained that the *maquiladoras* “never translate chemical warning labels into Spanish.”<sup>284</sup>

Health researchers describe the following “psychosocial factors”: (1) exposure to monotonous and repetitive movements combined with elevated production standards; (2) inadequate spatial positioning of jobs; and (3) harassing supervision by plant managers. Angelita, who worked in a Tijuana factory assembling cassettes forty-eight hours per week, produced 800 cassettes per day at the speed of one minute and twenty seconds per cassette.<sup>285</sup> But after seven years she was:

so exhausted that I felt like my lungs were collapsing. At times I arrived home crying from the pain. I went to a doctor. . . He said that if I continued working, my lungs were going to collapse. They ignored my complaints at Social Security. . . . They never even took an X-ray to see what was going on with me.<sup>286</sup>

—Angelita, a *maquiladora* worker.

When surveyed, one group of workers listed their concerns in descending order from exposure to toxic chemicals and fumes, to dangerous machinery and dangerous labor processes, which included speedup, improper time, and motion sequences.<sup>287</sup> Over half of a group of workers who responded to a 1989-1990 survey were uncertain whether management had done anything to remedy the problems, and only 4% said that they had received proper medical attention for work-related illnesses or injuries.<sup>288</sup> Surveyors also discovered small ways in which workers tried to protect themselves against the oppression. They engaged in what has been called “the struggle against speedup,”<sup>289</sup> a resistance to the industry-wide practice of a supervisor “constantly raising the [hourly production standards].” Ramona Torres, an electronics assembly worker in Ciudad Juárez, said that she would slow down her work when she sensed the supervisors were rais-

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283. PRIETO, *supra* note 1, at 11.

284. See González Testimony, *supra* note 166.

285. PRIETO, *supra* note 1, at 4.

286. *Id.* at 4-5.

287. See PEÑA, *supra* note 3, at 299 (stating that nearly 48% of workers reported workplace hazards).

288. See *id.*

289. *Id.* at 112 (interviewing different employees to discuss the “struggle against speed up”).

ing the standards too much by letting a few parts pile up. She would break a small part or remove a fuse from the visual, thus engaging in "little acts of sabotage, not enough to irritate, just enough to slow the work down."<sup>290</sup>

The argument that daily exposure to serious health and safety risks is a standard term or condition of employment in most *maquiladora* work is buttressed by the extent to which certain sectors potentially affect the total United States consumer market. For example, the electronic parts assembly, which produces items such as resistors, capacitors, fuses, molded plastic, printed circuits, magnetic discs, which may use raw materials such as adhesives and chemical additives,<sup>291</sup> has a \$25.4 million dollar potential consumer market in the United States. This is three times the consumer potential of textiles of \$8.7 million,<sup>292</sup> although less than the rubber and plastic sectors, and the metal sector, which respectively have a \$53.6 and \$58.8 million dollar share of the United States market.<sup>293</sup> Yet, the substances or instruments the women have to work within any sector are not the controlling feature in the drawbacks of *maquiladora* work. It is *how* the workers are treated and the unreasonable expectations of them to produce more, and at a faster rate, that enhances the hazardous nature of the industry as a whole:

The same thing happens to the eyes of those unlucky women whose work requires them to solder under the microscope, straining their eyes in bad light all day long. After a couple of years those girls inevitably end up wearing glasses. They're always complaining that daylight hurts their eyes and that they get headaches nearly every day. Their eyes burn and become inflamed, and they develop blurred vision. . . . In the sewing *maquiladoras* they also have problems. Workers always have irritated throats, they develop coughs, and many become asthmatic from the lint that comes out of the fabrics they work with. Their heads turn gray like little old ladies from so much lint. Think about it! If that's how your head looks, what must your lungs look like? Besides, from sitting in front of the sewing machine, in no time you can hardly stand the pain in your back and kidneys.<sup>294</sup>

—Maria Luisa, a *maquiladora* worker.

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290. *Id.* at 113.

291. See *infra* Table C (listing types of product lines and specific products in the *maquiladora* industry, as well as their significance to the United States economy in millions of dollars).

292. See *infra* Table C.

293. See *infra* Table C.

294. PRIETO, *supra* note 1, at 21.



*B. The Environmental Impact of Maquiladora Activity in the Border Region*

I had to dress the dolls as they went by on a conveyor belt that ran really fast. . . . I forget the number of dolls I dressed in a day, but I know it was thousands, so many that at various times I dreamed that Miss Piggy was attacking and killing me. I had to pull their little clothes on from the neck down and fasten two tiny buttons. For sure, these little dolls say good-bye and hello, but nothing in the world would make me buy one of the dolls for myself or my daughter. I hate them.<sup>295</sup>

—Elena, a *maquiladora* worker.

Normally, I get up at five in the morning. I get dressed, make the bed, have coffee or a smoothie for breakfast, and leave with six of my co-workers in Margarita's car. . . . As soon as we arrive we punch in and put on the smock the company gave us to wear when we were hired, which we have to wash and mend ourselves. We clean the machines and we cover our legs with plastic because it's so cold. The roof is tin, so when it's cold we have to wear a sweater and overcoat, and when it's hot, it's like an oven.<sup>296</sup>

—Angela, a *maquiladora* worker.

The intensity of *maquila* work, its repetitiveness and speed, make it highly dangerous to workers' health. Stress may also add risk to a worker's basic health or alertness for avoiding accidents on the job. Stress is apparent in the ways Elena and Angelita described aspects of their daily existence when they worked ten to twelve hour workdays, at about three dollars per day, without premium pay for overtime or risky jobs. They feared losing their jobs, knew that sexual harassment and monitoring of their sexual lives was just a part of the job, and were constantly being pressured to meet arbitrary production quotas. Of course, it is very difficult to establish a direct causal link between what the *maquilas* do and workers' health. It is even more difficult to create a causal link between the entire industry and the patterns it displays of sexist racism to the broader claims of environmental degradation at the border.

Researchers note that the policing of hazards and safety within the industry is mixed, varying either by sector or from shop to shop.<sup>297</sup> However, several factors also support the charge that the industry's disregard for basic occupational health and safety standards in the workplace is just an indicator of the *maquiladoras'* further disregard

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295. *Id.* at 8.

296. *Id.* at 3.

297. See Williams, *supra* note 116, at 269 (finding that although the number of field inspectors almost doubled from 1988-1994, the program remains inadequate).

for the environmental consequences of their transnational activities. Those factors include the massive *maquila* expansion in the eighties,<sup>298</sup> the increased migration to a region that has a fragile ecology and was never prepared for the fast development of an urban infrastructure,<sup>299</sup> the public controversies, like the outbreak of anencephaly among dozens of borderland children in the Matamoros-Brownsville area, and the allegation that certain *maquiladoras*' disposal waste practices were responsible.<sup>300</sup> Collectively, and against the backdrop of worker treatment, such factors have put the Mexican government in the environmental spotlight in recent years for its neglect of the border region.

While better policies have been issued in recent years by the Mexican government, and environmental groups are a constant feature at the border,<sup>301</sup> the reputation that environmentalism is not a high priority to the Mexican government remains firm. The officials' inconsistent behavior does not help get rid of the reputation. In 1995, three hundred more *maquiladoras* were licensed at the border. In that same year, the Mexican government eliminated the regulations that required detailed environmental impact statements.<sup>302</sup> NAFTA investors obviously take advantage of this. In a survey among United States *maquiladora* investors in Tijuana, Mexico, 10% stated that a key reason for leaving the United States were the environmental laws, while 17% considered it an important factor.<sup>303</sup> Clara Elena Torres' words illustrate the impact of such attitudes, policies, and practices on the workers themselves:

[T]he managers view this only as a cost issue. To protect us, they should make an investment in special uniforms, masks, emergency

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298. By mid-1997, in a period of ten years, the *maquiladoras* were employing over 850,000 people all along the border and in Ciudad Juárez, the number of *maquilas* rose from 130 to 300. See Susana Vidales, *Work and Health-Women at Risk-Revealing the Hidden Health Burden of Women Workers* (1997) (visited Sept. 2, 1999) <<http://www3.xls.com/cgi-bin/cwisuite.ex>>.

299. Williams, *supra* note 116, at 265. See also PEÑA, *supra* note 3, at 270-303 (looking at the extraordinary growth of the *maquiladoras* during the past decade).

300. Between 1987 and 1993, 386 anencephalic births (babies without brains) were recorded on the Mexican side of the border. Fifty-four children in Matamoros were born with multiple birth defects. All of their mothers had worked for Mallory Capacitators handling toxic substances without protection. The Center for Border Studies reported that over half of the 300 *maquiladoras* in the Tamaulipas region were dumping toxins into the drinking water in the waters of the Rio Grande adjacent to several residential communities. See *Preview of NAFTA*, *supra* note 264.

301. Over 200 environmental organizations may be working at the border. See Williams, *supra* note 116, at 272.

302. See Nancy Nusser, *NAFTA Fails to Stem Maquiladora Growth Along the Border*, COX NEWS SERVICE, Dec. 23, 1995 (on file with author).

303. See ICFTU, *supra* note 150, at 2.

respirators, ventilation fans and chutes to get rid of vapors, things like that. But they don't have to make the investment. Not by law nor by their good graces. . . . One time the supervisor told us it was up to us to buy the protection we wanted. That we could get cheap cotton masks across the border in El Paso. But how are you going to do that on a pittance of a wage? And those cotton masks won't really protect you. It is just a pretense . . . [and] if you complain you can get fired. And if you contact a union or a lawyer, the same.<sup>304</sup>

—Clara Elena Torres, a former assembler.

### *C. Transgressing the Gendered/Borders: The Lives of Two Maquiladora Workers*

#### *1. Escaping Domestic Slavery*

Sometimes the story of a *maquiladora* worker is one of promise. Sometimes it is one of utter pessimism. The story of promise is that of Angela, who was interviewed in 1982 by Norma Iglesias Prieto and who grew up very poor on a farm. For her, the eventual transition to being an independent worker in a *maquiladora* would be gender liberation from the entrenched cultural expectations for girls and women of the peasant or working poor classes. At home, she always had to perform the domestic chores, such as cleaning the house, washing, ironing, and cooking for her father and her brothers. At the age of fifteen, her father granted the request of a woman that Angela stay with her to help with chores in return for room and board. For years her typical job, which never paid much, was as a domestic servant.

Once married, she knew another side of the life of domestic slavery and unhappiness. Her husband was a batterer; only with some outside help from a friend was she able to leave him. Again, she took on a variety of jobs in domestic service. The separation cost her the custody of two of her children. She lost other children because economic uncertainties forced her to send one daughter to live with a relative. By the time she could afford to support her, the daughter did not want to live with her. For Angela, the point in her life when she would be working in a *maquiladora* served as an important crossing of the gendered borders that dictated a kind of domestic slavery, where she was under the thumb of demanding male relatives, of a battering husband, and of mistresses who used her domestic services. She would be grateful for her job in Tijuana assembling cassettes because it meant a

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304. PEÑA, *supra* note 3, at 300.

little more security and independence, even if the wages were not much above the pittance she earned as a live-in domestic.<sup>305</sup>

## 2. *Border-Crossing as a Constant Attraction to the Working Poor*

On my recent visit to Ciudad Acuña, I took photographs of the residential areas across the highway from the *maquiladora* industrial parks. Their façades cast a dismal contrast between sturdy buildings, paved streets, and fancy headquarter offices, all emanating wealth and power, against the poverty of unpaved streets, tar-paper shacks, and signs of filth, scarcity, and despair. In the late nineties, the situation of *maquiladora* workers throughout the border region took a downturn, especially after the peso devaluation crisis.<sup>306</sup> Thus, investors have an even greater boon today in lowering production costs because of the higher/lower exchange rate between American dollars and Mexican pesos. The lives of these people living in the widely condemned *colonias*,<sup>307</sup> and their obvious connection to the *maquiladoras*, beg the question—is there any possible source of accountability for such consequences in the treaties themselves? Consider the lofty language in NAFTA's labor agreement asserting its end goal to "improve working conditions and living standards in each Party's territory"<sup>308</sup> While this essay does not examine any potential bases for change under international law principles, it is useful to note the obvious from the provisions in the labor agreement itself—that they are *not* at all favorable towards workers' rights.<sup>309</sup>

People like Maria Ibarra, who also worked in Tijuana for Maxell, the cassette manufacturer, show few benefits in their livelihood from working in a *maquiladora* today. When interviewed by a reporter in 1996, Maria was living in the squatter sections of *colonias*. Maria

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305. See PRIETO, *supra* note 1, at 54-62 (describing in detail Angela's life before and after working in a *maquiladora*).

306. See *supra* notes 166-184 and accompanying text.

307. See WARD, *supra* note 98, at 1. *Colonias* can be described as "low-income housing areas, the principal characteristic of which are cheaply acquired land, inadequate infrastructure, and self-help dwelling construction." *Id.*

308. See *supra* note 127 and accompanying text (citing to selected language of Part One, art. 1 of the NAFTA Labor Accord).

309. *Id.* Various provisions in NAFTA's labor agreement disallow any labor law enforcement by United States officials in Mexico (Article 42), or the use of United States labor laws against Mexican officials (Article 43). Furthermore, in Article 49, there is protection for Mexico from being charged with failing to enforce its occupational safety and health, child labor or minimum wage laws as violating Article 3's duty to "promote compliance with and effectively enforce its labor law through appropriate government action," in cases where its officials or relevant agencies have reasonably exercised their discretion with respect to investigatory or prosecutorial matters, or if they have made a *bona fide* decision to allocate resources to other labor law matters deemed to "have higher priorities."

shared a home with another family. It was made of castoff materials from the factories, which typically means wooden frames salvaged from industrial pallets, with interior walls made of unfolded corrugated boxes.

Maria's life is a symbol of the life of millions working today along the border in over 4,000 *maquiladoras*. It begins with the wages they earn for their hard labor. Earning only 264 pesos per week<sup>310</sup> Maria worked for Maxell for three years:

Our wages are so low the company gives us a weekly bonus of food coupons worth 55 pesos. I have two sons who live with me. My oldest is 19. He has been working in a maquiladora for four years, since he was small. He couldn't continue going to school because we couldn't get by on what I was earning. The younger one is 16, and just started in a small shop where they're teaching him the job. Because he's still small, and just learning, he's earning enough for his bus fare and his food, and that's all.<sup>311</sup>

—Maria, a *maquiladora* worker.

The hardest part of Maria's livelihood is not having enough money to survive on even with working so hard: "Between my oldest son and myself, we bring in about 410 pesos a week. Water is very expensive. Gas (for cooking) is very expensive. Food is very expensive. If we want to eat meat, it can't stretch that far."<sup>312</sup>

Maria described the relationship with the company as one rooted in fear. It is illustrated in her tale of the time a few workers and herself decided to ask the company for some transportation, given the distance they had to travel, their low pay, and the cost of the bus fares. She and other workers talked among themselves "undercover, because we were afraid. Normally, the majority of the people don't really participate in anything. We always fear we'll be discovered and fired. Everything has to be done undercover."<sup>313</sup>

Eventually, the company provided them with a van, for which they were grateful, since the money not spent on a bus meant "another container of [purified drinking] water or a kilo of tortillas."<sup>314</sup>

When their plant manager was asked why they could not get just a little more money for their work, the response they got typified the attitudes of the industry:

I asked the assistant manager of our shift why they can't pay us a little more. On the other side of the border, people working for the

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310. In today's exchange that would be about thirty dollars per week.

311. Ibarra & Bacon, *supra* note 183.

312. *Id.* at 2.

313. *Id.*

314. *Id.*

same company earn in an hour what we earn in a day. He told us that the company came here because we work so cheap. If we pressured them to pay more, they would just take the work somewhere else and we would be left without jobs. I think this is really just an excuse, to make us grateful for our jobs.<sup>315</sup>

—Maria, a *maquiladora* worker.

Contemplating her future, Maria thinks mostly about not losing her job because “[o]nce you get to be a certain age, they don’t want you anymore.”<sup>316</sup>

Maria’s closing words to a reporter in 1996, a few years after the signing of NAFTA, illustrate how the lives of *maquila* workers are central to the reinforcement of bordered attitudes—between United States corporate privilege and a Third World nation’s economic dependency, between charges of exploitation and defenses of a foreign economy’s surplus labor, or women’s work and men’s work, citizens and illegal aliens, Mexicans and Americans and so on. The U.S.-Mexico border powerfully affects the psyche of those living in the Ibarra household on a daily basis:

I’ve thought about crossing the border, but I’m scared to do it. I have my sons. What would happen to them if I left them by themselves? . . . But the younger one is desperate, and he says he wants to go across. I tell him he has to be 18 but he’s free. How could I stop him? Here or there, who knows what could happen? And over there, it’s very bad. Because of lack of schooling, he doesn’t know English. So what would he be going to? To be humiliated? To work? No, no, I tell him, better here. But he just says, well, maybe later on then.<sup>317</sup>

—Maria, a *maquiladora* worker.

To the working poor, the border is a symbol of escape from the kind of poverty and despair seen in the lives of Maria and her two sons—of having to live in a makeshift house, with another family and on approximately U.S. \$35.00 a week. The border is a powerful magnet drawing people to it from the north and from the south. From the north come the American investors who know the border means more profits and lower production costs (cheaper wages). From the south come the people who leave behind the way of life under subsistence farming and forced by fate and circumstance to find work hopefully, at or across the border. But, the border is a symbol of freedom on both sides. While the Mexican side of the border symbolizes the hope for freedom from destitution and poverty, the American side lures

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315. *Id.*

316. *Id.*

317. Ibarra & Bacon, *supra* note 183.

employers to escape the pressures of unionized workers and demands for livable wages or working conditions. The myths and realities of the border as the symbol of corporate opportunity and privilege are so powerful today that the idea of a Dallas-based *maquiladora* being sued for the wrongful death of several workers in a Texas court because of the company's negligent practices struck the President of the Maquiladora Association as just plain odd. When he heard of the \$30 million settlement he stated, "[W]hat's the legality of having a jury in Eagle Pass decide about something that happened in Mexico?"<sup>318</sup> These are the words of someone who clearly knows that to cross the border as an investor into Mexico entails great freedoms. Indeed, it is a certainty that is *not* available to the frustrated *maquiladora* employee who wants to venture away from Mexico in search of a better life.

### 3. *In the Shadow of the Maquiladoras: The U.S-Mexico Border*

Given the precedent of the Bracero program, the tradition of traveling to the border in order to cross into the United States has not been easily eroded. But then how could it? Its replacement, the Border Industrialization Program, seemingly offered a new generation of men and women the opportunity to travel north in search of work in the *maquiladoras*. Except that, as illustrated above, the opportunities for work have not been the same for those looking for and finding work in a *maquiladora*. The *maquiladoras* have engendered other gendered borders—between women and men, young and old, more exploitable and too political, or suited because of their nature to women's delicate, repetitive and monotonous work, versus men's more thinking, active, and less boring work.

Arguably, the expansion of the transnational corporate activity across the border has provided employment to a large peasant class. It has modernized the Mexican woman by incorporating her in greater numbers into the paid labor force, thus potentially emancipating her from domestic patriarchy. But at what price? The women's voices tell us that modernization has been very expensive in their health, sense of well-being, and true feelings of pride in being a worker:

There should be other ways to make a living. Work should never be drudgery. It should be something you look forward to. It should be a time of joy and not just a burden. If the best we can do is come up with a machine that does the job fast while it smashes your fingers, then we are really in trouble. These factories are bad. They are bad

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318. Koenig, *supra* note 113, at D-1.

for your health and, look around, this is really bad for the land and water and air.<sup>319</sup>

—Gabriella, a former *maquiladora* worker.

Not surprisingly, researchers consistently agree that *maquiladora* work for women has neither enhanced their position in the family nor eroded the impact of patriarchy in their lives.<sup>320</sup> Instead, they have been hired for their presumed docility and the gendered attitudes that produce sex-based wage discrimination in Mexico, are firmly reflected in prevailing wage differences in the *maquiladoras* between men and women.<sup>321</sup> Stereotyped as being less troublesome, their displays of defiance through unionization efforts has generally resulted in dismissals and threats (blacklisting) or in the eventual shutdown by company owners who refused to negotiate with an organized union of workers.<sup>322</sup>

The life of Maria Ibarra is the story of pessimism connected to the continuing economic development under the auspices of NAFTA. Unable to make a real living, she had to give up the hope that her boys could have an education and maybe move out of the status of being working poor. Barely surviving on the wages she and her two sons earn, she has one boy so desperate to cross the border that he could not promise his worried mother that he would *not* cross. There is a greater injustice, however, in the uncertainty of a good or hopeful answer to Maria's questions, "What would he be going to? To be humiliated?"

The border is a dangerous place for any frustrated Mexican citizen/*maquila* employee who seeks relief from a life of despair by crossing illegally into the United States no matter how horrible the memories of a bad job or no job. If the typical border-crosser, who is often a young man or boy not unlike Maria's son, *does* cross, if caught, he is only guaranteed being denied his humanity by INS agents and becoming another faceless "illegal alien." He is a potential statistic in this nation's sometimes volatile discourse over immigration law and politics. If he crosses, he is putting his life at risk of human rights abuse, bodily injury, or even loss of life.<sup>323</sup> During the same period that the *maquiladoras* were expanding dramatically in the U.S.-Mexico region and defining the open face of the border for free trade,

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319. PEÑA, *supra* note 3, at 11.

320. See HONDAGNEAU-SOTELO, *supra* note 20, at 12 (discussing Mexican women's lack of emancipation, lower earnings, and sexual discrimination).

321. See *supra* Part III.

322. See PRIETO, *supra* note 1, at 81-97 (discussing the organizing efforts of a woman's union called "Solidev" in Tijuana in the 1980s).

323. See *supra* Part II (discussing examples of death from illegal border crossings).



other public policies and executive actions were being taken to intensify the closed character of the border, policies, and practices viewed as having an especially unfair discriminatory impact on darker-skinned Mexicans and Latinos in the Southwest.<sup>324</sup>

V. NAFTA-SPONSORED INVESTMENT AND THE SYMBOLIC  
SUPPORT OF A MILITARIZED BORDER

A. *Maintenance of a Duality in Law and Public Policy: The  
Militaryization of the U.S.- Mexico Border*

I previously argued that the international boundary separating the United States from Mexico has both real and symbolic messages in the lives of American and Mexican citizens alike. Because of its long and complex history involving two wars and a boundary treaty,<sup>325</sup> the border today divides a first and Third World country but, historically, divided Mexicanos, Native-Americans, and Anglos. The racism that fueled much of the expansionist settlements leading to the dispossession of lands owned by pre-Anglo settlers appears to have fed conflicts in the region for nearly a century thereafter.<sup>326</sup>

Dividing nations of unequal economic power and creating economic interdependency, the myth of the border remains a powerful force in the maintenance of dualities—between a rich and a poor nation, between investors and employees, between freedom and despair, between browns and whites, and between friendly Southern neighbors or illegal aliens threatening American jobs. It is a powerful reality and myth maintained daily by the official conduct of the INS Border Patrol.

The Border Patrol came to the Southwest in 1924.<sup>327</sup> In the 1930s and in 1954 it was the site of repatriation movements intended to alleviate the problems of the American economy by sending back home

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324. See Patrisia Gonzales & Roberto Rodriguez, *A Yellow Ribbon Around the 'Border'* (modified Oct. 10, 1997) <<http://www.latinolink.com/opinion/opinion97/101ospe.htm>> (describing mass immigration sweeps and the use of helicopters). It is unfortunate that I have experienced problems at border checkpoints.

325. See The Treaty of Peace, Friendship, Limits, and Settlement with the United States of America and the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., art. IX, 9 Stat. 922, 930 (creating the U.S.-Mexico Border at the Rio Grande River at the conclusion of the Mexican-American War).

326. See generally Luna, *supra* note 48, at 41-42 (investigating the dispossession of pre-Anglo property interests following the war between the United States and Mexico, notwithstanding the duty to protect those rights asserted in the Treaty, an abuse that was repeatedly justified in contemporary court cases by ethnic prejudices against the Mexican and the Spanish law that grounded Chicano/a property rights).

327. See DUNN, *supra* note 7, at 11-19 (describing the creation of the United States Border Patrol, a permanent border enforcement force).

those Mexicans who were working here illegally.<sup>328</sup> Of course, bordered attitudes based on race and class are apparent in the stories of how INS officials zealously sent to Mexico numerous American citizens who were of Mexican descent. For example, to this day, my father, who is a socially conservative and loyal American citizen and who is proud of his Mexican ancestry, recalls with bitterness the personal history of his family's "repatriation" during the Depression to the state of Chihuahua where they were not from, although he and his sisters were all American citizens. Without money to return to the state of Zacatecas, his family raised him in Parral, Chihuahua, and he returned to the United States to reclaim his citizenship when he was seventeen years old.

Today the myth and reality of the border continues to be maintained by the INS Border Patrol, except that efforts to close off the border to the Mexican migrant are currently fueled with a political discourse that focuses on drug trafficking, the flooding of immigrants who "take away American jobs," and even the threat of political terrorism. In the debate, many have charged the INS activities in the Southwest as being racist,<sup>329</sup> while others applaud the activities directed at controlling the swelling tide of "criminals" who have "outmanned, outgunned and out-planned the U.S. Border Patrol, Customs Service, and the DEA."<sup>330</sup> There is obviously a tension in the debate over border enforcement, one that requires a closer look at the evolution of economic activities in that region. But whatever its origins, this essay argues that continued maintenance of a strong border control policy provides an implicit assurance under NAFTA that corporate investors will have a surplus of cheap, exploitable Mexican workers.

### 1. *From the Bracero Program to the Maquiladora Program*

The transnational economic ventures in *maquiladoras* fostered by NAFTA are but an ironic replacement of the government policies that once created the agricultural employment policy known as the Bracero Program. Initiated during 1942 when Americans were caught up in World War II, the program lasted until 1964. It was designed to address the severe shortage of field workers affected by the war. In

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328. See *id.* at 13-14 (describing how the United States' changing border enforcement policies depend on the agricultural labor needs of United States farm workers).

329. See González Testimony, *supra* note 166, at 1. See also *Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, in AMERICAS WATCH REPORT: HUMAN RIGHTS WATCH, June 1992, at 37 (describing INS agent harassment of Latino citizens).

330. *Eagle Pass-For a Second Time in a Week*, SAN ANTONIO EXP.-NEWS, July 7, 1996, at 1A.

the end it was discredited because the program had depressed industry wages and bypassed American workers for Mexicans who worked for lower wages. That problem surfaced because many employers violated the Bracero Program's guidelines, hired workers illegally, and then shielded themselves under the "Texas Proviso." This provision of the 1952 Immigration and Naturalization Act provided the removal of illegal aliens from the premises as a remedy for employer violations.<sup>331</sup>

The Bracero Program set an important pattern in the world of agribusiness, where capitalism dictates that one search for the most profit at the least cost. It produced an essential component to the success of United States capitalism—the ability to exploit a surplus source of cheap, exploitable workers—the Mexican citizen. The historical lineage is clear in the metamorphosis of the Bracero Program into the Border Industrialization Program of 1965, later renamed the Maquiladora Program. The latter was designed to generate the infrastructure and the legal conditions for attracting foreign manufacturing investment along the border with the United States, and to occupy primarily male migrant workers.<sup>332</sup> However, United States worker who is being replaced today is not temporarily away at war, nor is worker's replacement typically a male Mexican migrant. The American worker who loses is someone like Shirley Reinhardt who lost her job with Philips Magnavox in Morristown, Tennessee, when they opened up a *maquiladora* in Mexico.<sup>333</sup> Unlike the Bracero Program, there is no end in sight for the *maquiladora* program. It is already thirty-four years old and still growing. It was given new life by the Clinton Administration with the signing of the NAFTA, intended to create new international politico-economic institutional frameworks.

## 2. *The Militarization of the Border and its Relationship to NAFTA*

In an unorthodox interpretation of contemporary drug enforcement and immigration control, Timothy Dunn has recently argued that the U.S.-Mexico region was gradually militarized between 1978 through 1992 "as a consequence of the broad range of measures adopted by U.S. government agencies to address the issues of undocumented immigration and illegal drug trafficking."<sup>334</sup> The political rhetoric that

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331. See Philip Martin et al., 2 RURAL MIGRATION NEWS (Jan. 1996) (visited March 26, 2000) <[http://migration.ucdavis.edu/Rural-Migration-News/Rural\\_MN\\_Jan\\_96.html](http://migration.ucdavis.edu/Rural-Migration-News/Rural_MN_Jan_96.html)> (discussing the enforcement of the Bracero program guidelines).

332. See HONDAGNEU-SOTELO, *supra* note 20, at 30-31 (discussing the Mexican government plan for the Border Industrialization Program).

333. See *supra* Part V.

334. DUNN, *supra* note 7, at 31.

supported the increased attention on the border as a region of war against, drugs, terrorists, and tides of illegal aliens originated during the Reagan presidency, especially around the time that Reagan officials were trying to justify United States military intervention in Central America that was facilitated by drawing on American racist fears, like those associated with the Black refugees of the Cuban Mariel boatlift. In fact, in a key Reagan speech intended to rally national support for the United States' presence in Central America in 1986, the year Congress passed stronger measures against the hiring of undocumented immigrants through IRCA,<sup>335</sup> the President associated an unchecked Southern border with the threat of terrorist and subversive activity as being "just two days . . . from Harlingen, Texas."<sup>336</sup>

Dunn argues that dire portrayals of the nation's vulnerability at the border, especially because they were uttered by leading United States government officials and media outlets, influenced border enforcement policies and practices. The end result was a pattern of developing governmental decisions designed to address the problems of the War on Drugs, terrorism, and the invasions by illegals. These policies intended to meet the objective of "protection of our frontiers against excessive illegal immigration" through "preemptive and prophylactic measures."<sup>337</sup> That pattern, Dunn argues, took the form of a "militarization"; that is, a series of measures associated with the United States military doctrine of "low-intensity conflict" ("LIC").<sup>338</sup> Described as a "war for all seasons," the LIC doctrine, which was born in the Reagan era and is especially associated with the efforts to counter insurgents in the Third World, has three principal concerns designed either to counter revolutionary activities or to bring about social control in a destabilized country: (1) internal (rather than external) defense of a nation; (2) an emphasis on controlling targeted civilian populations; and (3) the assumption of the military with nonmilitary or police functions and vice-versa (the police assume military functions).<sup>339</sup>

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335. See The Immigration Reform and Control Act of 1986, *supra* note 54. IRCA's goal of reducing undocumented immigration was accomplished via a "carrot and stick" approach whereby employers would be sanctioned if they hired illegal aliens (the stick) while the government would pass extensive amnesty and legalization programs for long-term undocumented residents (which about 3 million people took advantage of). DUNN, *supra* note 7, at 42.

336. DUNN, *supra* note 7, at 2-3 (discussing President Reagan's characterization of the border situation).

337. *Id.* at 2 (reporting a high ranking Department of State officer's characterization of the border situation).

338. *Id.* at 29-30 (discussing the military style enforcement of the U.S.-Mexican border).

339. See *id.* at 19-22 (discussing the foundation and structure of low intensity conflict doctrine).

From 1978-1992, and arguably to the present, since recent reports show that the INS continues unabated in its beefing up the Border Patrol,<sup>340</sup> LIC doctrine at the U.S.-Mexico border manifested itself in the implementation of new equipment such as "high tech air-support resources," the most typical of which has been military style helicopters carrying aerial spotlights and loudspeakers. These are frequently used to intimidate undocumented immigrants to deter them from crossing the border.<sup>341</sup> Other high tech equipment has included the introduction of military equipment such as night-vision goggles, large tripod starlite infrared scopes, vehicle mounted infrared telescopes, upgrading existing ground sensors, low-level television surveillance systems in key sections of the border to document crossings by immigrants, the upgrading of communication systems, and joint efforts between the United States Army and the Border Patrol to develop improved infrared night surveillance equipment.<sup>342</sup> Construction activities were also a major aspect of the beefing up of the INS Border Patrol by adding more checkpoints, detention centers, and staff.<sup>343</sup> Probably one of the most controversial images of the militarization was the construction during the Bush era of the "Berlin Wall" type border barrier, a ten foot high thin corrugated steel wall that was built along seven miles of the border in the San Diego-Tijuana area of the border in California!<sup>344</sup>

Dunn's study is obviously intended to generate a new discourse on the border enforcement debate, one that not only focuses on the human rights implications of border militarization but also encourages a re-assessment of the need for a militarized border in the light of recent policies designed to promote expanded economic integration, like NAFTA.<sup>345</sup> The fact that the border became increasingly militarized before NAFTA could be taken as evidence that there is no real connection between that phenomenon and the purpose of NAFTA, which is to promote expanded economic exchange. But, as previously

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340. See Jonathan Wright, *U.S. to Deploy 1000 More Border Patrol Agents*, NAT'L NETWORK FOR IMMIGRATION AND REFUGEE RIGHTS, Mar. 12, 1998 (on file with author); see also Angie Cannon, *Clinton Beefs up U.S. Anti-Drug Fight*, MIAMI HERALD, INT'L ED., Feb. 26, 1997 (on file with author) (showing a 53% increase in INS agents since 1993).

341. See DUNN, *supra* note 7, at 43 (describing an increase in number of helicopters from two in 1980 to 22 in 1988).

342. See *id.* at 29-30 (enumerating L.I.C. equipment).

343. See Ken Ellingwood, *U.S. Mexico Fence Splits Border Community*, MIAMI HERALD, INT'L ED., June 15, 1996; David LaGessee, *Texas to get 250 New Border Patrol Agents from U.S.*, DALLAS MORNING NEWS, Jan. 15, 1997, at 3A.

344. See DUNN, *supra* note 7, at 66 (discussing the Bush Administration's construction of a steel wall along the U.S.-Mexico Border).

345. See *id.* at 156-71.

noted, the possibility of new economic ties with Mexico via NAFTA should have theoretically addressed the linkages between new border economic activity, border region enforcement, and undocumented immigration flows.<sup>346</sup> Prior to NAFTA's signing, United States officials debated the migrant labor issue and its connection to border enforcement<sup>347</sup> even as they alluded to the role NAFTA would play in reducing the flow of illegal immigration by expanding the employment opportunities for Mexican workers.<sup>348</sup>

But NAFTA has not reduced the flow of immigration, and references to the need for more border control continue with sensationalized references to the flooding of the land with illegals, smugglers, and drug traffickers.<sup>349</sup> Thus, what appears is a more fundamental connection amongst (1) the increased levels of border economic activity post the Bracero Program and the onset of the Border Industrialization Program; (2) the increases in militarized surveillance; (3) the 1992 booster shot to the Border Industrialization Program through NAFTA in 1992; and (4) the unabated level of militarized surveillance techniques since the signing of NAFTA. Arguably, this nation's commitment to an increasingly globalized and interdependent economy depends upon a harsh border patrol policy because a globalized economy is dependent on the availability of cheap labor. The Border Patrol provides essential support for a treaty that, viewed broadly, clearly set out to internationalize the mobility of goods, capital, and services, while restricting the mobility of low-cost labor.<sup>350</sup> It gave lip service to the "[improvement of] working conditions and living standards in their respective territories,"<sup>351</sup> but provided no real workers' rights in language or effect.<sup>352</sup> In other words, no effort will ever really be made to stop the INS Border Patrol, despite the human rights abuses it has been charged with.<sup>353</sup> Instead, the INS operates with a kind of *carte blanche* to police the border. It's almost as if it were doing its part to assure a global economy by disciplining the Mexican worker to stay home to fulfill the NAFTA investor's expectations:

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346. See *supra* Part II.

347. See Johnson, *Free Trade*, *supra* note 119, at 940; see also DUNN, *supra* note 7, at 165.

348. See DUNN, *supra* note 7, at 166.

349. Gary Martin, *Eagle Pass Police Chief Seeking Fed Funds for Border Drug Fight*, SAN ANTONIO EXP. NEWS, Feb. 25, 1997, at 6A; Dane Schiller, *Mexico Troops Sent to Border in Drug War*, SAN ANTONIO EXP. NEWS, Mar. 23, 1997, at 1A; Dane Schiller, *Drug Running, Illicit Crossing up in S. Texas*, SAN ANTONIO EXP. NEWS, Jan. 6, 1997, at 1A.

350. See Article 1 of Labor Agreement (NAFTA), *supra* note 127.

351. *Id.*

352. See *id.*

353. See *Civil Rights Abuse and Brutality at the U.S.-Mexico Border*, HUMAN RIGHTS WATCH (1992); see also *Migrant Deaths*, *supra* note 80, at 42-43.

opening up a new *maquiladora* in Mexico is bound to be successful with the guarantee of low-cost Mexican labor.

*B. The Law and Policy Context: Human Rights, Racial Discrimination, and the Border Patrol as a Symbolic Guardian for NAFTA Investments*

*1. Human Rights Abuse*

The consequences of a militarized border region under NAFTA have been dramatic and tragic. In 1997, near the Rio Grande, young Ezequiel Hernández, a goat herder, who was carrying a rifle to fend off a pack of wild dogs that had recently taken one of his goats, was fatally shot. Ezequiel had just watered his goats. Nearby were several United States Marines who were policing the border. At the time, the Marines had actually been observing another man on the Mexican side of the border, Gerónimo Oropeza, who was standing by the nearby Rio Grande river, “suspiciously” looking over at the United States. Consistent with their training in defense of national security to suspect all unusual activity at the border as potential drug trafficking or smuggling, the Marines came upon Ezequiel, whom they assumed was in cahoots with Oropeza. At that moment, Ezequiel was aiming his gun at something moving in the brush. He thought it was a possible jackrabbit or one of the wild dogs intending to kill another one of his goats. Instead, it was the Marines dressed in *ghilli* suits. The suits were frightening. They were designed for low-intensity warfare and can be described as a conglomeration of heavy, stringy, brown and green burlap with duct tape worn over faces smeared with oil and grease to camouflage soldiers in brushy terrain. Shots rang. Ezequiel did not have a chance against the M-16s of the four young Marines. According to the Marines’ commanding officer, Colonel Kelley, they were under no obligation “under the rules of engagement” to expose themselves in order to get Ezequiel’s attention.<sup>354</sup>

*2. Racial Discrimination*

Though accidental, Ezequiel’s death is no less tragic and wrong for the implicit message in contemporary border policy that the border region is a war zone, one that targets dark-skinned Mexicans and

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354. See *Hernández Memorial Gallery*, *supra* note 102; see also Monte Paulsen, *Fatal Error*, AUSTIN CHRON. (visited Oct. 21, 1999) <[www.auschron.com/issues/vol.18/issue17/pols.border.html](http://www.auschron.com/issues/vol.18/issue17/pols.border.html)>. This version of the events is reconstructed from the critical poem by Bobby Byrd, *The Rules of Engagement*, 1997, in *THE PRICE OF DOING BUSINESS IN MEXICO* (1998). See also *United States of America: Human Rights Concerns in the Border Region with Mexico*, AMNESTY INTERNATIONAL, May 3, 1998 [hereinafter *Amnesty Report*].

Mexican-Americans believed to be engaged as either "soldiers" in the drug war, undocumented immigrants, or the harbinger of illegals. Whether going in or out, the border region is hostile and dangerous to those who are brown and poor. The norm of the border control policies is "act first, question later." The soldiers who killed Ezequiel escaped accountability.<sup>355</sup> Yet, NAFTA-related activities towards the border continue unabated, with the construction of large highways designed to accommodate the traffic of *maquiladora* suppliers, or shipments to and from in the import-export business.<sup>356</sup> Ironically, the year following Ezequiel's accidental shooting, a "Joint Task Force Six" announced the construction of twelve helicopter launch pads and fifty high-tech lights nearby.<sup>357</sup> As two social critics note, either the border region is an occupied territory truly caught up in a real war, or this is an expensive way of distracting attention away from the NAFTA-related policies that speak of "free trade" and exploitation for border investors.<sup>358</sup> However viewed, it is clear that current law and policy do not favor the human rights concerns of those who are targeted by America's militarized border policy and activities.

At one time the use of the military for policing would have been an illegal act, in violation of the Posse Comitatus Act of 1879,<sup>359</sup> but any force of that law was eroded under the Reagan administration's zeal to engage in the War on Drugs.<sup>360</sup> By 1986 President Bush launched Operation Alliance, meant to increase interagency cooperation, and by 1989 the Defense Authorization Act entrenched the military in police activities along the border.<sup>361</sup> Border law and policy under NAFTA has only further entrenched the military-like character of policing the border. For example, the Illegal Immigration and Immigrant Responsibility Act of 1996 ("IIRA") enhanced all of what Dunn reports was accomplished in the period of 1978-1992. IIRA placed a heavy focus on border security, interior enforcement, enforcement against smuggling, deportation and exclusion, and public assistance. It authorized the hiring of 1,000 Border Patrol agents and 300 support staff. It authorized construction of a fourteen mile triple fence, established penalties for high-speed flight, and it expanded the program of fingerprinting of illegal and criminal aliens. High speed

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355. *See id.*

356. *See* Patricia Gonzalez & Roberto Rodriguez, *Military Distractions and Border Militarization Escalate*, U.P.S., Feb. 6, 1998.

357. *See id.*

358. *See id.*

359. *See* 18 U.S.C.A. § 1385 (1879).

360. *See* DUNN, *supra* note 7, at 112-17.

361. *Id.*



flight is defined as any speed over the legal speed limit. It increased investigatory staff and made it possible for local, state, and federal agencies to inform INS about an individual's legal status. It permits wiretapping, prosecutions under RICO, and the hiring of additional attorneys to prosecute alien smugglers. It bars re-entry by illegal aliens for five years, and of course, it bars all illegal aliens from receiving any form of public assistance, except for emergency medical relief, disaster relief, and school lunches.<sup>362</sup> The message is quite clear to Mexicans—stay out of this country.

At law, it is eminently clear that the United States federal government has the authority and responsibility to protect the integrity of the borders.<sup>363</sup> In theory, those who protect our borders are also supposed to carry out their duties by respecting the Constitution and the laws of the United States, including treaties, which are deemed part of the supreme law of the land.<sup>364</sup> The trouble with raising any kind of human rights concern with respect to border activity, however, is that any relevant law, whether domestic or international, would ultimately lack any bite even if it contained provisions prohibiting activity that results in the violation of human rights.<sup>365</sup> Much of this is the consequence of firmly established principles in federal jurisprudence which have construed international treaties very conservatively, holding for example, that human rights clauses are non-self-executing, or that international human rights clauses are not controlling.<sup>366</sup>

There is not much more relief evident in the law that pertains to the INS's Border Patrol activities that are criticized as unfairly targeting the suspect class of Latinos and Mexican-Americans or Hispanics who travel in and around the border region and risk being harassed and intimidated by the INS.<sup>367</sup> For example, the long-standing "discretionary function" exemption in the Federal Tort Claims Act,<sup>368</sup> continues to protect Border Patrol cops who have engaged in high speed

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362. See Margaret Wong, *Summary of the 1996 New Immigration Policies* (visited Mar. 25, 2000) <<http://www.ilw.com/imwong/1996pol.html>>.

363. See U.S. CONST. art. I, § 8.

364. See U.S. CONST. art. VI, § 2.

365. See generally RICHARD B. LILLICH, SPECIAL ISSUE: THE UNITED STATES CONSTITUTION IN ITS THIRD CENTURY: FOREIGN AFFAIRS: RIGHTS—HERE AND THERE: THE CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS (noting weaker American constitutional law principles when compared to other nations).

366. See *Stanford v. Kentucky*, 492 U.S. 361, 389-90 (1989).

367. As noted in the *Amnesty Report*, in its zeal to protect the border the INS has targeted numerous legal citizens and subjected them to harassment, ridicule, and intimidation. See *Amnesty Report*, *supra* note 354, at 3-4.

368. 28 U.S.C. § 1346 (1984).

chases that led to a wrongful death claim.<sup>369</sup> Similarly, civil rights violations under §1983 are subject to “qualified immunity” standards, as in a case involving the shooting and killing of an undocumented migrant after he crossed the border.<sup>370</sup> That standard has been held to shield the conduct of officers whose acts were deemed to be in conformity with the reasonable belief that they were complying with the law and their duties.<sup>371</sup> As long as anti-immigrant hostilities persist in this country, the value of judicial principles recognizing that aliens are persons under our Constitution will continue to be balanced against the need to restrict benefits to those illegals who have been presumed, always, to be lazy Mexicans wanting to come into the United States only to abuse the public welfare system and not to earn a decent wage for their hard labor.

## VI. CONCLUSION

One thing is clear to *maquila* workers in solidarity today: NAFTA means crossing the border into Mexico to enjoy the privileges of free trade. NAFTA also means more *maquiladoras* and a pattern of investment and worker treatment with a rather bad history on wages, working conditions, and environmentalism. A pattern that is troubling enough to raise the very debatable question of whether the people, and the natural resources that are crucial to the “lowered production costs,” to the profitability of NAFTA-induced investments lose more than they gain from the continued licensing of *maquiladoras*.<sup>372</sup> In general, what can be said about the *maquiladora* system is that it is hardly a humane system of employment and hardly something the knowing United States citizen would want to support.

This essay has shown that in moving forward towards modernization for the Mexican working woman, the U.S.-NAFTA induced foreign investors also enjoy a travel into the past, into the days before unions and labor reform would invent the weekend, the eight-hour workday, or the livable minimum wage. This international division of labor between United States and Mexican workers and consumers has had (and continues to have) far-reaching impact on the lives of Mexican workers. In addition, the American worker, whose town suddenly loses jobs to the celebrated economic venture of opening up a transnational corporation, has also felt the impact:

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369. See *Stuart v. U.S.*, 797 F. Supp. 800, 804 (1992).

370. See *Bonilla v. City of San Diego*, 755 F. Supp. 293, 298 (1991).

371. See *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

372. See *Preview of NAFTA*, *supra* note 264.

In 1978, I went to work for Philips [Magnavox]. And in 1988 we were told, "We're planning on moving these jobs to Mexico." And then one day I came in and there was all the equipment that I worked on and it was in crates. And I said, "Well I guess I'll just go over here and work on tuners. No, we're going to be boxing that up and sending it too" . . . You need to stop giving these big corporations money to move from one place to another, move it out of this town that I live in; my city pays corporations to move in here. Philips got cheaper rates on their electricity. They got cheaper rates on all this stuff when they were here. Cheaper than everybody else so that they'd stay here. Well they didn't stay anyway. They left.<sup>373</sup>

Corporations leave, feeling the relief of not having to worry about collective bargaining with unions, about eight-hour workdays, anti-discrimination laws, occupational health and safety standards, or environmental impact statements.<sup>374</sup> On the other side of the border they become *maquiladoras*, who will employ mostly women and often children.<sup>375</sup> In form and practice, they will employ workers in a harsh system designed to be labor-intensive, to structure output, and to produce high levels of productivity. This is maintained by a system of constant supervision, timed assignments, production quotas, and competition amongst workers.<sup>376</sup>

Supervisors will continue to impose stiff penalties for workers who refuse to give into demands (whether sexual or otherwise). Workers will remain under the constant threat of losing a job for simple violations such as talking about working conditions, improving their situation, leaving workstations, taking unexcused absences, or "sabotaging" supervisors' *unreasonable* productions standards and expectations. They will engage freely in the expression of attitudes about the identities of their employees that are racist and sexist.<sup>377</sup> Managers will impose implicit demands upon young female workers to utilize their sexuality for managerial favoritism. Meanwhile, their agents will determine that female workers in their childbearing years are not worthy workers, and they will have to take a pregnancy test or otherwise exchange their reproductive rights in return for job security.<sup>378</sup>

This article has been grounded in a Latina or "LatCrit" gendered perspective, one that is consciously sensitive to the fluidity of identity and that intersects gender analysis with race, class, age, and citizen-

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373. THE MORRISTOWN PROJECT, *supra* note 35.

374. *See supra* Part IV.

375. *See supra* Part III.

376. *See supra* Part III.

377. *See supra* Part III.

378. *See supra* Part IV.

ship. It is also an internationally-oriented gendered-class analysis<sup>379</sup> grounded in the use of narratives to illustrate the social justice impact of contemporary law and public policy affecting the people living and working at the U.S.-Mexico border daily. This article was motivated as much by my disgust for what is allowed to happen to the mostly male migrants who try to cross the border in search of work, as by my horror at the conditions for the mostly female employees in the wildly successful *maquiladora* industry, whose presence is only expanding in Mexico and other Third World nations. It was motivated by my desire to expand a LatCrit perspective that uses narratives to educate as well as to elicit, hopefully, the compassion of those who can make change by having them hear the voices of the women living, working, struggling, and somehow surviving at the U.S.-Mexico border. It is a border so heavily militarized these days that it threatens the lives of their own children who might try to cross the barbed wires in order to escape the lives of despair created for their families by working for or near a *maquiladora*.<sup>380</sup>

A Latina critical legal theory may help us understand that the women drawn into *maquiladora* employment are not just workers whose duties, wages, treatment, and working conditions are the by-product of gender attitudes that coalesce or intersect with racism, classism, or ageism. They are also mothers, sisters, daughters, housewives, and often the sole or main support of a family. Beyond their need for better wages and working conditions they have a right to shelter, food, health, safety, and dignity in their lives, qualities that are not furthered by working in the *maquiladoras*. Instead, the *maquiladoras* have appropriated the benefits of patriarchal gender attitudes and exploited mostly young women and children. Gendered attitudes have also been displayed in the *maquiladoras*' overall hiring patterns that disfavor male employment<sup>381</sup> or relegate male workers to specific industries tailored to stereotyped notions of gender<sup>382</sup> or, in some plants, blatantly disfavor their hiring over the age of thirty-five.<sup>383</sup> Such facts explain why many people continue to see male employment in the *maquiladoras* as only a springboard in the migrant's

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379. On the benefits of gendered class analysis in the international realm, see James D. Cockcroft, *Gendered Class Analysis: Internationalizing, Feminizing and Latinizing Labor's Struggle in the Americas*, 103 *LATIN AMERICAN PERSPECTIVES* 42-46 (1988) (arguing that a gender analysis will capture the "super exploitation" of women in international labor facilitated by patriarchal and gender ideologies).

380. See *supra* Part IV (recounting the story of Maria Ibarra and her sons).

381. See *supra* Part V.

382. See *id.*

383. See HRW Study, *supra* note 242.

travels towards the border and the United States in search of a better paid job.<sup>384</sup> The gendered patterns of the *maquiladoras* thus attest to a violation of NAFTA's avowed goal of "improving working conditions"<sup>385</sup> for the people of the signator nations, and a total failure in discouraging the flow of male migrants across the border. It is ironic indeed that the perpetuation of gender ideologies enabled by NAFTA-induced investments (and facilitated by patronizing attitudes based on race, age, and class) should have so preferred the *woman* as a worker as to destine the man to live in the shadows of the *maquiladora* with the hope, and the justified fear, of crossing the U.S.-Mexico border.

Finally, this article was written in memory of my mother María de la Luz Rosales Arriola ("Lucy") and my grandmother Petra Rivas Arriola, both of whom worked for many years for minimum wages, doing piecework assembly in the garment and apparel industry both in the United States and in Mexico. The images of women hard at work, in shops that avoided compliance with United States labor laws because, after all, they were just immigrant Mexican women, are forever seared in my memory. The images of piles of hundreds of collars, sleeves, and belts that they had stitched in the factory and brought home so that I, as a child, with my brothers and sisters, could help turn them inside out at one or two cents a piece, are also strong memories of the pain and the sorrow that accompany the hard labor of love. That simple task for us might have translated into a few pennies we could spend at the candy store, but for them it meant sometimes the only way of producing enough to meet a weekly minimum wage.

Yet, the strongest memory I have reclaimed in the course of writing this article was the year in the late sixties my mother Lucy traveled back and forth on a weekly basis from Mexicali, Baja California, back to our small tract house in a Los Angeles suburb. Lucy's many years as a talented bilingual "floor lady," in the garment industry had earned her the reputation of being a valued production manager among a group of investors who had just opened a *maquiladora* in Mexico. My mother was asked to be a trainer and supervisor and was offered a salary that represented some of the best money she had ever earned. But, while the factory eventually thrived, my mother's job did not and one time she returned to California mid-week instead of on her usual Friday night. The story she brought back was almost too hard to believe. Mami had been warned by a friend with managerial

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384. See ICFTU, *supra* note 150 (arguing that *Maquiladora* employment for men is just a "springboard" to cross the border); *Migrant Deaths*, *supra* note 80, at 1.

385. Article 1 of the Labor agreement, *supra* note 127.

connections that she needed to leave Mexico immediately. Her efforts to help the women she was training and supervising, to organize a petition for management requesting better wages and working hours had caught the attention of the owners, who were allegedly connected to a then prominent Mafia family. Whether the threat of a contract on her life was true or not, the message was clear to Lucy and she left. She had met the limits of her abilities for precision and hard work, which usually earned the gratitude of her employers, in the consequences of her compassionate sense of social injustice—having to fear others who had been granted the power and the privilege to cross the border in order to profit at the expense of another people.

TABLE A

WOMEN IN MAQUILADORA WORK WAGES IN RELATION  
TO COST OF LIVING

FOOD	HOURS REQUIRED TO PURCHASE
Beans, 1 kg	4 hrs
Rice, 1 kg	1 hr, 26 mins
Corn Tortillas, 1 kg	40 mins
Chile peppers, 1/8 kg	1 hr, 15 mins
Tomatoes, 1 kg	1 hr, 35 mins
Beef, 1 kg	8 hrs
Chicken	3 hrs
Eggs, 1 doz	2 hrs, 24 mins
Vegetable Oil, 1 ltr	2 hrs, 24 mins
Limes, 1 kg	1 hr, 20 mins
Milk, 1 gal	4 hrs, 17 mins
Toilet paper, 1 roll	43 mins
Detergent, 1 kg	2 hrs
Diapers, box of 30	11 hrs, 30 mins
Shampoo, 10 oz	2 hrs, 25 mins
Elem. School uniform	57-86 hrs
Roundtrip bus fare	1-3 hrs
Cooking gas, 1 tank	20 hrs
Aspirin, bottle of 20	2 hrs, 25 mins

Note: Figures based on avg. prices in Tijuana, B.Calif., for an assembly line worker earning 26 Mex. Pesos a day (\$3.57). 1kg. Is = to U.S. 2.2lbs.

Source: <<http://www.igc.apc.org/trac/feature/sweatshops/maria.html>>.

TABLE B  
SELECTED SAMPLE OF UNITED STATES COMPANIES  
OPERATING AS MAQUILADORAS IN MEXICO

Canon Business Machines
Casio Manufacturing
Daewoo
Ertl Company
Fisher Price
JVC
Kendall Healthcare Products
Kyocera
Hasbro
Hitachi Home Electronics
Honeywell, Inc.
Hughes Aircraft
Hyundai Precision America
International Rectifier
Leviton Manufacturing Co.
Matsushita
Mattel toys
Maxell Corporation
Mitsubishi Electronics Corp.
Nellcor Puritan Bennet
NSK Autolive
Pioneer Speakers
Samsung
Sanyo North America
SMK Electronics
Sony Electronics
Squares D

Source: <[http://www.codicorp.com.mx/paginas/advan/ad\\_maqu.html](http://www.codicorp.com.mx/paginas/advan/ad_maqu.html)>.

TABLE C  
CONSUMER PRODUCTS IN MAQUILADORAS

PRODUCT LINE	POTENTIAL MARKET IN MILLIONS OF UNITED STATES DOLLARS	SPECIFIC PRODUCT
Metals	58.8	Steel tubes, sheets and other metallic parts; Motor carcass; Pure lead; Tin bars; Gears and stems; Iron and steel wire covered with silicone; Coined aluminum
Rubber and Plastics	53.6	Polyethylene; ABS Tubes; Hoses and Plastic Connectors; Boxes of molded plastic; Polyethylene bags; Latex gloves; Foam rubber
Electronic/Electric Parts	25.4	Resistors; Capacitors; Fuses; Boxes of molded plastic; Printed circuits; Integrated circuits (chips); Magnetic disc's and tape
Adhesive & Chemical Products	18.7	Silica sand; Additives and softeners for steam boilers; Aluminum sulfate; Trichlorethylene and other solvents; Ammoniac; Epoxin resin; Glue
Mechanical Parts	16.1	Motor valves; Motor sleeves; Truck brakes; Trucks fifth wheel attachment; Radiator parts and Turbo charges; Cams; Belt saws
Paper/Cardboard Packages	15.6	Boxes of corrugated cardboard; Adhesive labels; Corrugated cardboard divisors; Cardboard boxes; Wax covered milk containers; Mill paper waste; Paper towels
Wood	10.0	Pine triply; Compressed-type triply (Fibercell); Sawdust; Boards and bars of different sizes; Wax covered milk containers; Drum panels; Mahogany and other types of wood
Textiles	8.7	Metallic zippers of different sizes; Elastic tape; Cotton and Polyester straps; Nylon thread; Linen Fabric; Cotton fabric; Buckles and rods
Glass & Ceramic	7.7	Stained and Colored; Ceramic elements; Crystal tubes; Crystal mirrors; Ceramic joint-compound; Fiber glass; Fiber glass plates
Hardware	7.7	Metallic clamps; Handles; Hinge, Nuts and screws of different sizes; Rivers; Nails; Door locks

Source: <[http://www.codicopr.com.mx/paginas/advan/ad\\_maqui.html](http://www.codicopr.com.mx/paginas/advan/ad_maqui.html)>.



